

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY



Office of Government Ethics

March 4, 2013

VIA EMAIL TO:

xxx xxxxxx xxxxxx

Director

xxxxxx xx xxxxxx xxx xxxxxxxxxxxxxx

xxxxxx.xxxxxx@dc.gov

Dear xxx xxxxxx:

This responds to your request for advice concerning whether a proposed outside activity for pay would be consistent with your ethical obligations as a government employee. Based upon the information you provide in your email of February 28, 2013, and your conversation on the same date with a member of my staff, as long as you ensure that you meet the requirements set forth below, your proposed outside activity is permissible.

You state that you are the Director xx xxx xxxxxxxx xxxxxx xx xxxxxx xxx xxxxxxxxxxxxxx and, as such, you xxxxxxxx xx xxxxxxxxxxx xxxxxx xxx xxxxxxxxxxxxxx xxxxxxxx for over xxx xxxxxxxx xxxxxxxxxxxxxx xxxxxxx and xxxxxxxxxxxxxx, inform them of the standards for xxxxxx xxxxxx xxxxxxxxxxxxxxxxxxxxxx, and refer them to District government resources. As part of your daily activities, you xxxxx xxxxxxxxxxx xxxxxxxxxxxxxx, draft xxxxxxxx xxxxxxx and xxxxxxxxxxx xxxxxxxxxxxxxx to the xxxxxxx xx xxx District of Columbia, request xxxxxx xxxxxxx, xxxxxxxxxxxxxx xxxxxx xxx xxxxxxxxxxxxxx, and respond xx xxxxxxxxxxxxxx xxxxxx xxx xxxxxxx xxxxxx xx xxxxxx.

You state that you have been asked by a private company, xxxxxxxxxxx xxxxxxx, xxxxx, to teach classes on xxxxxxx xxxxxxxxxxxxxxxxxxx xxx. You have been provided with a complete course content book and the teacher's guide book, and generally are expected not to deviate from the prescribed content of the course except to supply input from a "Train the Trainer" class you took, which you paid for yourself. You further state that your background as a former xxxxxxxxxxx xxxxxxx and a former xxxxxxx xxxxxxx xxxxxxx for the xxxxxx xxxxxxxxxxx xxxxxxx xxxxxxxxxxxxxx makes you a candidate for this assignment. In addition, you state that teaching this class will not involve the use of any District government resources or time and the content of the course is not related to your District government responsibilities. In your conversation with a member of my staff, you mentioned that teaching this course may involve the use of a minimal amount of annual leave, approximately four days over the span of a year.

There are essentially three applicable provisions of the Code of Conduct that inform my decision, each of which are found in Chapter 18, Title 6B of the D.C. Municipal Regulations.¹ Noting specifically that your proposed activity is to engage in teaching, DPM §§ 1804.3 through 1804.5 provides guidance. The DPM states:

1804.3 An employee may engage in teaching activities, writing for publication, consultative activities, and speaking engagements that are not prohibited by law, regulation, or agency standards, only if such activities are conducted outside of regular working hours, or while the employee is on annual leave or leave without pay.

The second provision states:

1804.4 The information used by an employee engaging in an activity under § 1804.3 shall not draw on official data or ideas which have not become part of the body of public information, except nonpublic information that has been made available on request for use in such capacity, or unless the agency head gives written authorization for use on the basis that its use is in the public interest.

And finally:

1804.5 If the employee receives anything of monetary value for engaging in an activity under §1804.3, the subject matter shall not be devoted substantially to the responsibilities, programs, or operations of his or her agency, to his or her official duties or responsibilities or to information obtained from his or her government employment.

Here, you confirm that this is indeed a teaching activity and that the activities would be performed outside of work hours or while you are on annual leave, so DPM § 1804.3 is satisfied. You also confirm that the information you will use for teaching is unrelated to your District government position and has been provided to you by xxxxxxxxxxxx xxxxxxxx, xxxx, so there is no indication that you will draw on official data or ideas which have not become part of the body of public information. Therefore, DPM § 1804.4 is satisfied as well.

You also confirm that the subject matter of the class you propose to teach shall not be devoted substantially to the responsibilities, programs, or operations of your District government agency or official duties or responsibilities, or to information you obtained from your District government employment. In fact, you state that your background as a former xxxxxxxxxxxx xxxxxxxx and a former xxxxxxxx xxxxxxxx xxxxxxxx for a xxxxxxxx agency makes you a candidate for this assignment. Therefore, DPM § 1804.5 is satisfied.

As you state in your email, you will ensure that teaching this class will not involve the use of any District government resources or time. You mentioned in your telephone conversation with a member of my staff that you may need to take a total of four days of annual leave throughout the year to teach this class. The DPM permits you to be on annual leave while engaging in this proposed teaching activity, as long as such use of annual leave does not interfere with your ability to perform your official government duties. DPM 1804.1(a).

¹ Hereinafter, Title 6b of the D.C. Municipal Regulations will be referred to as the District Personnel Manual or DPM.

Assuming your representations to be complete as to pertinent facts and entirely accurate, and further assuming that you would abide by the restrictions outlined above, I find that the restrictions on outside employment would not prevent you from pursuing this proposed outside activity.

Please be advised that this advice is provided to you pursuant to section 219 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (“Ethics Act”), effective April 27, 2012, D.C. Law 19-124, D.C. Official Code § 1-1161.01 *et seq.*, which empowers me to provide such guidance. As a result, no enforcement action for violation of the District’s Code of Conduct may be taken against you in this context, provided that you have made full and accurate disclosure of all relevant circumstances and information in seeking this advisory opinion.

Finally, you are advised that the Ethics Act requires this opinion to be published in the District of Columbia Register within 30 days of its issuance, but that identifying information will not be disclosed unless and until you consent to such disclosure in writing, should you wish to do so.

Please let me know if you have any questions or wish to discuss this matter further. I may be reached at 202-481-3411, or by email at darrin.sobin@dc.gov.

Sincerely,

_____/s/_____
DARRIN P. SOBIN
Director of Government Ethics
Board of Ethics and Government Accountability