

**CITY OF BIRMINGHAM
BOARD OF ETHICS
ADVISORY OPINION 2012-02**

**DECISION
SEPTEMBER 28, 2012**

Question Presented

May the City of Birmingham Assistant City Manager/Human Resources Director, who is also a city resident, serve in a volunteer capacity as an Auxiliary Police Officer with the City of Birmingham?

Answer

Mr. Valentine may serve in a volunteer capacity as an Auxiliary Police Officer with the City of Birmingham, provided: (a) he abstain from approving, disapproving, recommending or otherwise acting upon any matter in which he has directly or indirectly a personal interest, and in such circumstances he recuses himself from the matter before him (Ethics Ordinance Section 2-324(b)(1)), (b) he explains the reason for his abstention, (c) he shall disclose on the records of the city commission or such other city board, commission or committee, as the case may be, any conflict of interest and the nature and extent of such interest (Ethics Ordinance Section 2-324(b)(2)(3)), (d) that such service is not incompatible or in conflict with the discharge of his official duties (Ethics Ordinance Section 2-324(a)(6), and (e) such employment does not impair his independence of judgment or action in the performance of his official duties (Ethics Ordinance Section 2-324(a)(6).

Analysis and Discussion

The City of Birmingham's Assistant City Manager/Human Resources Director, Joseph Valentine, who is also a city resident, has sought an advisory opinion pursuant to Section 2-325(b) as to potential conflict with the Code of Ethics, and a hearing was conducted on August 16, 2012 before this Board.

Mr. Valentine is a City employee, not subject to a Collective Bargaining Agreement, a resident of Birmingham, and is interested in volunteering as an Auxiliary Police Officer. He has been an Auxiliarist with the U.S. Coast Guard since 2004 and is desirous of continuing to serve in a similar capacity closer to his home. In his professional capacity, Mr. Valentine is responsible for all employee recruitment and selection activities, labor contract negotiations and administration of the labor agreements with the City's bargaining units, wage and salary administration, employee benefits administrations, maintenance of employee personnel files and records, and a variety of human resources related activities. This position is assigned special projects by the City Manager and, as Assistant City Manager, he attends City Commission meetings and directs staff activities in the absence of the City Manager. Volunteer service would not be performed by Mr. Valentine during his normal working hours with the City of Birmingham.

Prior to the hearing, Mr. Valentine sought and obtained the approval from both the City Manager and the Police Chief so as to serve in a volunteer capacity as an Auxiliary Police Officer with the City. The Chief himself is serving as Mr. Valentine's requisite sponsor. In his official capacity, he has responsibility over the City Police Department in the absence of the City Manager. As an Auxiliary Police Officer, he would be working "at will" and could be terminated by the Chief of

Police. The City Manager appoints the Chief and the City Commission has to approve such appointment.

The Auxiliary Police Unit consists of volunteers who either work or live in the City of Birmingham. Prior to appointment, auxiliary officers receive 120 hours of instruction at the Oakland Police Academy Reserve Officer Training Program. Auxiliaries assist regular police officers during many special events held throughout the year. They also act as back up to regular officers on patrol. Auxiliary police members are most visible in providing crowd and traffic control and security for high school sporting events.

The Police Auxiliary has its own police chief. Mr. Valentine has received the endorsement of this individual to volunteer as an Auxiliary Police Officer.

Auxiliary officers do not replace any regular officer, but serve to supplement the officer in his/her routine assignments. It is recognized that a well-trained Auxiliary Police Unit will be invaluable in the case of a disaster or an extreme emergency.

Mr. Valentine, as an applicant for such a position will be interviewed by a panel consisting of the Auxiliary Chief, department command staff members and a representative of the Birmingham Police Officer's Association. He would then be required to complete a Reserve Officer training course as aforesaid, which is paid for by the City. The Auxiliary Chief, with the approval of the Chief of Police, retain the right to separate from the unit, an Auxiliary Officer who, in their opinion, does not remain active. There are Policies and Procedures for the Auxiliary Officer Program, and Reserve Officers are at-will appointees and may be terminated without cause by the Chief or his designee. Reserve Officers have no police authority and may only take enforcement action when they are working in conjunction with and are under the direct on-site supervision of a police officer of the City's department.

In the past, other City employees have been appointed to the Auxiliary. Mr. Valentine anticipates that he would serve with the Auxiliary Unit approximately one day per month. The Chief of Police determines the number of persons in the Auxiliary.

In his official capacity, at certain times Mr. Valentine has authority over the Chief, however he does not make any final decision (except in the absence of the City Manager). If there is a grievance it goes to the City Manager or his designee (usually the Assistant City Manager) and then to the City Commission. Thereafter it may go to an Arbitrator and/or the Court. In such situations, the City Manager can appoint someone other than Mr. Valentine if the City Manager so elects. The history has been that as to disciplinary actions with the police department, Mr. Valentine can only recall one instance, and it went to the City Manager and others, and not him. There is no state statute precluding Mr. Valentine's request. See Section 2-324(a)(10)(c).

There is concern about Mr. Valentine having to address a matter as Assistant City Manager involving someone who has authority over him in the Auxiliary, but this can be mitigated as that matter first goes to the City Manager, and the City Manager may redirect same in his discretion. If successful in his pursuit of joining the Auxiliary, Mr. Valentine stated that he would inform the City Commission of his appointment as an Auxiliarist.

Ethics Code Section 2-324(a)(6) is controlling in deciding this issue. It provides: "No official or employee of the City shall engage in or accept employment or render services for any private or public interest when that employment or service is incompatible or in conflict with the discharge of his or her official duties or when that employment may tend to impair his or her independence

of judgment or action in the performance of his or her official duties.” Therefore Mr. Valentine may not serve as an Auxiliarist when such activity conflicts with his official position or when same may impair his judgment or official duties.

Mr. Valentine stated that there is no present limitation on the number of auxiliarists, and therefore he is not in competition with others for this position. Therefore he is not in a position of preferential treatment for himself beyond that which is available to every other citizen. See Ethics Ordinance Section 2-324(a)(8).

Also, it does not appear that Mr. Valentine would be in violation of Ethics Ordinance Section 2-323(3), as his volunteer service with the Auxiliary does not appear that it would result in, or create the appearance of, his losing complete independence or impartiality of action, so as to properly conduct his official duties. An Auxiliarist does not receive economic compensation for his or her services, so this eliminates various potential concerns for a conflict of interest. In addition, Mr. Valentine exhibited to the board his familiarity with the responsibility to make full disclosure of the nature and/or extent of his direct or indirect personal interest in a matter before him. See Section 2-324(b)(1), which provides as follows:

“(1) Responsibility to disclose. It shall be the responsibility of the official or employee to disclose the full nature and extent of his or her direct or indirect financial or personal interest in a matter before him or her.

No official or employee of the city shall participate, as an agent or representative of the city, approving, disapproving, voting, abstaining from voting, recommending or otherwise acting upon any matter in which he or she has directly or indirectly a financial or personal interest. The official or employee shall, in such circumstances, recuse himself or herself from the matter before him or her.”


Mr. Valentine also needs to be cognizant of disclosure of any conflict of interest and disqualification, pursuant to Section 2-324(b)(2) number 3, which provides: “A city employee who has a financial or other interest in a matter before the city commission or any city board, commission or committee and who participates in discussion with, or gives an official opinion to the city commission, or to such other city board, commission or committee relating to such matter, shall disclose on the records of the city commission or such other city board, commission or committee, as the case may be, any conflict of interest and the nature and extent of such interest.”

Conclusion

Mr. Valentine, as the city’s Assistant City Manager/Human Resources Director, may serve in a volunteer capacity as an Auxiliary Police Officer with the City of Birmingham as such service does not appear incompatible or in conflict with the discharge of his official duties, nor does it appear to tend to impair his independence of judgment or action in the performance of his official duties. In the event that such volunteer involvement may result in, or create the appearance of, losing complete independence or impartiality of action, he would need to make full disclosure and recuse himself from such matter. Additionally, if he has an interest in a matter before the city commission or other city board or committee he needs to disclose to it the nature and extent of such interest and any potential conflict.

The Ethics Board wishes to thank Mr. Valentine for bringing this matter to us. We hope this Opinion will assist city employees as they consider participating in worthy volunteer activities in

our community. Mr. Valentine's preparation for his hearing before this board should serve as a model for others.


James D. Robb, Chairperson


John J. Schrot, Jr.


Sophie Fierro-Share*

*Ms. Fierro-Share was absent from the hearing of this matter, however she joins in this Advisory Opinion as it is already the majority vote of the Ethics Board and she concurs therewith.