

**CITY OF BIRMINGHAM  
BOARD OF ETHICS  
ADVISORY OPINION 2018-3**

**Questions Presented**

- 1) Does it violate the Ethics Ordinance if Leslie Pielack, the City of Birmingham Museum Director, sells books at her cost, which she wrote on her own time, to the Friends of the Birmingham Museum, an independent, tax-exempt corporation that exists to support the City of Birmingham Museum, which in turn resells those books at the Museum or during Museum events, and donates the profits to the Museum?
  
- 2) Does it violate the Ethics Ordinance if Leslie Pielack, the City of Birmingham Museum Director, speaks at Museum outreach events at which the Friends sell her book for the benefit of the Museum and promote such events?
  
- 3) Does it violate the Ethics Ordinance if the Museum Director sells her book at professional conferences and book signings arranged by her publisher so long as she is presented as the author of the book, and not the Director of the Birmingham Museum?

**Answer**

No, if the Museum Director has met with the City Manager to assure the activity does not otherwise violate City policy and is careful not to promote private book sales as having any relationship to the City of Birmingham, the Museum or her position as Museum Director.

**Factual Background**

Ms. Leslie Pielack is employed by the City of Birmingham on a part time basis as Museum Director and has written a non-fiction book about the history of southeast Michigan.

Ms. Pielack wrote and researched this book on her own time and at her own expense. The book has been published by Arcadia Publishing/The History Press. The publisher will market the book to bookstores and museum gift shops as well as on line. Ms. Pielack is entitled to a small royalty through the publisher, unless she purchases the books herself, in which case she pays a discounted price.

The publisher and Ms. Pielack hope to schedule book events/author signings at bookstores and museum shops where the book will be sold. As author, Ms. Pielack,

is entitled to purchase books for her own inventory to sell at personal book signings and events that she arranges to promote the book.

Additionally, in Ms. Pielack's role as Birmingham Museum Director she will occasionally promote and give presentations on topics related to Birmingham's history as part of the Museum's outreach services. While not fee based, these events generate donations for the museum that range from \$50-\$150.00 per presentation.

The Friends of the Birmingham Museum is a 501(c)(3) non-profit corporation that conducts fund raising and educational activities to support the Birmingham Historical Museum and its mission. This group would like to purchase some of Ms. Pielack's books at her cost and at their expense for sale during Ms. Pielack's outreach presentations. Ms. Pielack will purchase the books from her publisher at her discount for the sale by the Friends. The Friends propose to donate the book sale profits to the Museum.

Ms. Pielack also plans to promote her book for her own account at non-museum related events. These events will not be promoted at the Museum or in a manner that links them to the City of Birmingham or her role as Museum Director.

### Analysis

ETHICS OPINION 2010-1 held that City Officials may participate in independent fund raising activities for the Museum if:

- (A) the activity is clearly promoted as a private activity, not sponsored by the City of Birmingham; and
- (B) the City Official meets with the City Manager to define the extent and methodology of any fund raising activities to assure they comply with City policy and follow the appropriate decisional process.

The Friends of the Birmingham Museum is an independent corporation not subject to the Ethics Ordinance, which regulates the behavior of City Officials. The Friends is not a City Official. It is neither elected nor appointed, nor does it serve in a position established by the City Charter or ordinance. As a part-time employee, Leslie Pielack is a City Official. Ordinance Section 2-322. She has cleared her activity with the City Manager and has agreed she will state that her book promotions are not City sponsored. Therefore, unless the particular facts of this proposal create a specific conflict of interest prohibited by the Ethics

Ordinance, the sale of Ms. Pielack's book at a Museum outreach program by an independent entity which will donate the proceeds to the Museum is a permissible activity.

The Ethics Ordinance details two separate types of conflict of interest, general and specific. General conflicts of interest are described in Section 2-323 which lists 5 types of activities that might result in or create the appearance of a conflict of interest, such as using public employment for private gain, giving or accepting preferential treatment, giving up independence of action, making a decision outside of official channels or affecting public confidence adversely. The proposed activity does not implicate any of these general concerns. The closest is 2-323(1), which prohibits using public employment for private gain. Here the proceeds of the sales go to the Museum. Nobody is compelled to purchase the books from the Friends or indeed, at all. Ms. Pielack does not receive the proceeds of any of the sales the Friends make.

Section 2-324 lists 8 very particular types of conflicts of interest that may arise and requires disclosure of these potential conflicts of interest. Several sub-sections merit consideration, but none constitute a conflict of interest under the Ethics Ordinance on the facts presented.

Section 2-324(b)(2)(a)(3) requires Ms. Pielack to disclose her interest in this matter to her supervisor and she has done so.

“Every official or employee of the City shall use personnel resources, property and funds [for public purposes] and not for personal gain or benefit.” 2-325(a)(3).

“No official or employee of the city shall engage in a business transaction in which he or she may profit because of his or her official position or authority.” 2-324(a)(5).

Ms. Pielack wrote the book on her own time and with publicly available resources. She wrote the book as a local historian, not as the Museum Director. She is not profiting from her official position. In fact, the Ethics Ordinance specifically allows part-time employees, like Ms. Pielack, to engage in private business:

“This section shall not prohibit a part-time elected or appointed city official from engaging in private employment or business on his or

her own time as a private citizen and where city business is not involved, subject to his or her disclosing such private employment or business....” 2-324(a)(6)(2nd paragraph).

“No official or employee of the city shall use, or attempt to use, his or her official position to secure, request or grant unreasonably any special consideration, privilege, exemption, advantage, contract or preferential treatment for himself, herself or others, beyond that which is available to every other citizen.” 2-324(a)(8).

Again, there is no conflict of interest under this section. It is hard to see what special privilege is involved here. The Friends of the Birmingham Museum is free to promote any book of local history, has done so in the past, and doubtless would do so if it thought there was public demand.

Ms. Pielack indicated she usually receives a small royalty of the sales price from the publisher for each book sold. In this case Ms. Pielack is purchasing the books from the publisher for the Friends using her own discount, is selling the books to the Friends at that cost, and receives no royalty. The Friends may then sell Ms. Pielack’s book at one of the Museum outreach events. Section 2-324(a)(4) speaks directly to this situation:

“No...employee of the city shall....solicit...any...other thing of value for the benefit of any person or organization, other than the city, which tends to influence the manner in which the...employee performs his or her duties.”

The section goes on to except fees for speeches or published works. The proposed activity does not violate Section 2-324(a)(4) on at least two counts: it generates no fee for a published work and there is no indication that the arrangement will influence the manner in which Ms. Pielack performs her official duties.

### **Conclusion**


Ms. Pielack may speak at Museum outreach events at which the Friends sell her book for the benefit of the Museum and may promote such events without violating the Ethics Ordinance so long as she has discussed the proposal with the City Manager and received authorization, clearly discloses that the book is a private work and not the product of the City of Birmingham nor is the City responsible for its content. Ms. Pielack may promote her book at non-Museum related events so long as she does not use City resources or state or imply that the

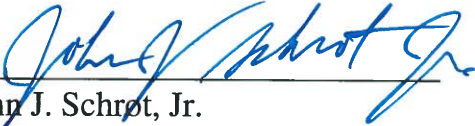
City of Birmingham or the Museum is a sponsor of, interested in, or in any way involved with the preparation or sale of the book.

Ms. Pielack may sell her book at professional conferences and book signings arranged by her publisher so long as she is presented as the author of the book, and not the Director of the Birmingham Museum.

We congratulate Ms. Pielack on her book. And thank her for her generosity and commitment to the Birmingham Museum. We wish her luck with this project.

Approved on October 18, 2018:

  
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James D. Robb  
Chairperson

  
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John J. Schrot, Jr.  
Member

  
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Sophie Fierro-Share  
Member