



THE PRINCE GEORGE'S COUNTY GOVERNMENT
BOARD OF ETHICS

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May 8, 2015

[REDACTED]
Department of Public Work and Transportation
8401 D'Arcy Road; Suite 100
Forestville, Maryland 20747

RE: AO 15-0118

Dear [REDACTED]:

You inquired whether you may work for Uber, Inc. as an independent contractor when off-duty from your County job.¹ Your inquiry was analyzed under Sections 2-293(b), Employment Restrictions, and 2-293(g), Disclosure of Confidential Information, of the Prince George's County Code of Ethics (Ethics Code). Based on our analysis, we conclude that your secondary employment as a Uber driver is not likely to create an actual conflict of interest so long as you do not provide transportation services that originate within the County, and you do not use confidential information from your County job that is not otherwise available to the general public.

Background

The facts as set forth in the information provided to the Board of Ethics (Board) are as follows:

You are a new employee hired as a Permits Specialist II, within the Taxi Division of the Office of Transportation of the Department of Public Works & Transportation (DPW&T). As a Permits Specialist II, you are responsible for reviewing taxi license applications, renewals, and transfers of Prince George's County taxi medallions between taxi operators. In addition to other duties, you issue licenses in accordance with local codes and established procedures; manage taxi inspection and application files; and certify that all license files are properly maintained. As a Permits Specialist II, you are also privy to information concerning taxi licensing processes and procedures, rates, and fees associated with existing and future taxi permits.

¹ Uber is an American international company headquartered in San Francisco, California. It develops, markets, and operates mobile applications and websites that allow registered users to arrange and schedule transportation and/or logistics services with third party providers of such services. See <https://www.uber.com/legal/usa/terms>.

As an independent contractor for Uber, you would provide transportation services to users of Uber's electronic applications. Your main duties would be to accept rider requests, meet the rider at a designated pickup location, and transport the rider to a designated drop-off location. This work would be performed after and prior to your work hours with DPW&T. You would provide transportation services throughout the Washington, D.C. metropolitan area, including Prince George's County, Maryland.

Analysis

The Ethics Code includes two specific provisions which restrict secondary employment. Section 2-293(b)(1)(A)(i) of the Ethics Code, prohibits a County employee from holding outside employment with an entity that does business with or is regulated by the employee's agency unless the Board of Ethics grants a waiver pursuant to Section 2-293(h). Section 2-293(b)(1)(A)(ii), prohibits secondary employment that would impair the impartiality or independence of judgment of the official or employee.

Our review of the information obtained in connection with your request for approval of secondary employment, reveals that Uber does not do business with the County and is not regulated by DPW&T. In 2015, Prince George's County Councilmember Todd Turner proposed a bill that if passed by the County Council, would have regulated companies such as Uber, as well as third-party providers of transportation services.² However, Mr. Turner's bill was pulled from committee in March due to similar legislation proposed at the State level in Annapolis. The passage of Senate Bill 868 and House Bill 1231 on April 13, 2015, places companies such as Uber and their independent drivers under the regulatory authority of the Public Service Commission.³ The State legislation is awaiting the Governor's signature and is expected to take effect on July 1, 2015.⁴

Having concluded that Section 2-293(b)(1)(A)(i) of the Ethics Code is currently inapplicable to the facts of the instant matter, we turn our attention to Section 2-293(b)(1)(A)(ii), which provides that, absent a waiver, a County employee may not hold any employment relationship that would impair the impartiality or independence of judgment of the employee. As

² Council Bill 10-2015 would have required Uber and similar companies to obtain a license from DPW&T prior to operating in the County. An Uber driver would also have been required to meet certain conditions before being permitted to operate his vehicle in the County.

³ The State legislation authorizes the establishment of transportation network services in the State; requires specified motor vehicle insurance to be issued by specified insurers under specified circumstances; prohibits a person from operating a specified motor vehicle for hire under a specified permit unless the person holds a specified license issued by the Public Service Commission; authorizes the Commission to issue a permanent driver's license if the applicant submits a specified criminal background check; etc. See SB-0868.

⁴ Although the County does not do business directly with Uber and does not regulate its behavior, the State legislation appears to provide certain counties and municipalities with the authority to impose an assessment, tax, fee, or a charge on the services provided by Uber and like companies. Under certain circumstances, counties could impose an assessment on trips that originate within their respective boundaries. If a county enacted such a fee, Uber would be required to not only collect the assessed fee from the operator who accepts a request for a ride made through its electronic network system, but also to remit the fee to the State Comptroller for subsequent disbursement to the appropriate county. *Id.*

an independent contractor for Uber, you would provide transportation services to users of Uber's electronic applications. You would provide transportation services throughout the Washington, D.C. metropolitan area, including Prince George's County, Maryland. Your role as a Uber driver, no matter how independent, would put you in direct competition with the group your agency regulates; the very group of individuals you interact with on a daily basis as part of your County job.

Based on the facts as noted herein, we conclude that your impartiality and independence of judgment as a County employee would be impaired with regard to matters involving the processing and management of taxi cab business licenses because of your competing interests as a Uber driver. Although you are not in a position to establish, influence or effect policy within the Office of Transportation, the nature of your technical and independent work with the Office, does provide the opportunity to frustrate the taxi cab licensing process for County applicants. The Ethics Code is intended to ensure that the conduct of the County's business is free from even the appearance of improper influence.⁵ For these reasons, you may not work as a Uber driver unless your trips originate outside of the County. You may not pick up passengers within the geographical boundaries of the County.

Lastly, Section 2-203(g) of the Ethics Code states that other than in the discharge of the official duties of the employee, an employee may not disclose or use for his own economic benefit or that of another person, confidential information that the employee has acquired by reason of the employee's public position and that is not available to the public. This provision means that you may not use to your advantage any data, records, files, logs, or other information maintained by the Office of Transportation that is not freely available to other Uber drivers and licensed taxi cab businesses. If you have access to information that could be used to your economic benefit, and this information is not otherwise available to the general public, you are prohibited from using this information.

Conclusion

In the absence of any apparent connection between the County and Uber, your proposed secondary employment does not violate Section 2-293(b)(1)(A)(i) of the Ethics Code. However, with regard to Section 293(b)(1)(A)(ii), we conclude that your impartiality and independence of judgment as a County employee would be impaired because of your secondary employment.

The Board may waive the prohibitions of Section 293(b)(1)(A)(ii) if it finds that the proposed secondary employment is not likely to create an actual conflict of interest. The Board concludes that your secondary employment as a Uber driver is not likely to create an actual conflict of interest so long as you do not provide transportation services that originate within the County, and you do not use confidential information from your County job that is not otherwise available to the general public.

Finally, this opinion does not address any agency or departmental policy that may apply to you as a result of your secondary employment. Therefore, you are advised to consult with

⁵ See § 2-289 of the Prince George's County Code (2015).

supervisor or agency head to ensure that your department does not have more restrictive rules than the minimum standards imposed by the Ethics Code.

Sincerely,

A handwritten signature in blue ink that reads "Covette Rooney". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Covette Rooney
Board Chair