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TO: The Honorable Detroit City Council

FROM: David Whitaker, Director
Legislative Policy Division Staff 

DATE: 9/23/2025

RE: **MEMO RE POTENTIAL CONFLICTS OF INTEREST FOR OMBUDSPERSON CANDIDATES**

At the Committee of the Whole held on September 18, 2025, your Honorable Body requested that the Legislative Policy Division (LPD) to provide a memorandum analyzing whether there is a conflict that exists that would prevent an individual from simultaneously serving as the Ombudsperson for the City of Detroit and the Detroit Public Schools Community District (DPSCD) School Board, the State Board of Education for Michigan, or as staff for a Detroit City Council Member.

CONFLICTS UNDER DETROIT CITY CHARTER

Section 7.5-416 of the Detroit City Charter provides that the “Ombudsperson may not hold any office of trust or profit other than the office of Ombudsperson, or engage in any occupation for profit outside the duties of this office. The Ombudsperson is not eligible to hold any city office until two (2) years after leaving the position.” The terms “office of trust or profit” and “occupation for profit” are not defined in the Charter. However, it is likely that membership on the DPSCD and State Board of Education falls under the definition of a position of trust, as the term “trust” is commonly defined as “assured reliance on the character, ability, strength, or truth of someone or something.”¹ These boards are entrusted with the responsibility of overseeing public education for our children, which the Charter acknowledges as “our most precious resource.”

¹ <https://www.merriam-webster.com/dictionary/trust>

Because of the broad oversight authority given to the Ombudsperson under the Charter, the position requires a high degree of ethical responsibility and objectivity. The Charter prohibition on holding an office of trust simultaneously while serving as the Ombudsperson is meant to ensure that the ombudsperson does not have any divided loyalty, which minimizes conflicts of interest. To that end, it is reasonable to conclude that an individual appointed to be Ombudsperson for the City of Detroit should not be allowed to simultaneously serve on the DPSCD School Board or the State School Board of Education.

The Charter language regarding a position of profit also suggests that the Ombudsperson shall not hold any position or have any employment for monetary compensation while holding the office of Ombudsperson. DPSCD Board Members do not receive a salary for their work, however they are compensated with “a stipend of not more than \$250 per meeting or event up to a total of not more than sixty (60) per fiscal year.”² Therefore, a Board Member can receive a maximum of \$15,000 in a single year for their work on the Board. Similarly, members of the State Board of Education receive “per diem compensation” and “reimbursement of expenses” as established by the Michigan legislature.³ It is not explicitly clear whether the purpose of the “for profit” language Section 7.5-416 is meant to cover such a stipend or is only meant to prohibit salaried or hourly wage employment. However, our interpretation of the Charter and reasonable public policy dictates that the Ombudsperson should refrain from holding any position that provides a form of compensation while serving out their term.

CONFLICTS UNDER THE INCOMPATIBLE PUBLIC OFFICES ACT

The Incompatible Public Offices Act (IPOA) prohibits certain public officials and public employees from simultaneously holding public offices that are incompatible with one another.⁴ Under the IPOA, “incompatible offices” is defined as “public offices held by a public official which, when the official is performing the duties of any of the public offices held by the official, results in any of the following with respect to those offices held: (i) the subordination of 1 public office to another; (ii) the supervision of 1 public office by another; (iii) a breach of duty of public office.”

Although it operates within the City of Detroit, DPSCD is a separate legal entity governed by the elected School Board, on which a candidate for Ombudsperson currently sits. According to Section 7.5-407 of the Charter, the Ombudsperson’s jurisdiction allows them to “investigate any official act of any agency except elective officers which aggrieves any person.” This applies equally to all City agencies. Since DPSCD is not a City agency, it exists outside of the Ombudsperson’s jurisdiction and investigatory powers. Neither the Ombudsperson nor any other City official or agency has the explicit authority to supervise DPSCD, as the Michigan Constitution and state law provide that public school districts are under the exclusive control of the state legislature.⁵

Where an individual would not be able to carry out the duties of both offices simultaneously, the IPOA would be implicated. DPSCD schools operate within the City, are subject to City ordinances, and routinely have interaction with City departments as a result. DPSCD schools also operate under various

² <https://go.boarddocs.com/mi/detroit/Board.nsf/Public#>

³ MCL 388.1005.

⁴ MCL 15.181 *et seq.*

⁵ Mich. Const. 1963, art. 8, § 2; *Jones v. Grand Ledge Public Schools*, 349 Mich. 1, 84 N.W.2d 327 (1957); *Sturgis v. Allegan County*, 343 Mich. 209, 72 N.W.2d 56 (1955); *Sprick v. Regents of University of Michigan*, 43 Mich. App. 178, 204 N.W.2d 62 (1972), judgment aff’d, 390 Mich. 84, 210 N.W.2d 332 (1973).

contractual agreements with the City. The following is a list of conflicts that currently exist and where foreseeable incidents may arise:

1. The City pays DPSCD for the use of schools as polling places for City elections. As expressed by Council Members during the Formal Session on September 9, 2025, there are currently tensions over the cost that the City pays for these services.
2. The school subject to the City's blight ordinance, and as a consequence the schools have been assessed blight tickets which we understand amounts to several million dollars in outstanding claims.
3. Detroit Water and Sewerage Department (DWSD) service rates and, in particular, drainage fees have continued to be controversial and have resulted in various legal actions.

Therefore, there is the potential that a conflict could arise between the duties of the Ombudsperson and the DPSCD Board if the Ombudsperson were asked to investigate an alleged breach of such an agreement. Alternatively, a DPSCD Board Member who also serves as Ombudsperson may be tempted to pursue an investigation of the Buildings, Safety Engineering and Environmental Department for issuing blight tickets. Similar reasoning applies to the collection of drainage fees owed by DPSCD to the DWSD.

Although the potential for conflict is not sufficient to find a violation of the IPOA per se, it is possible that a conflict could arise in the future.⁶ The IPOA is less of a concern with the State Board of Education as its function is general supervision, planning, and coordination of public education throughout the state. This function is less likely to create conflict on a specific city level because decisions of the State Board apply generally across the state.

The language of Section 7.5-416 of the Charter suggests that an individual serving as the Ombudsperson should not hold any occupation for trust or profit outside of their office. Because DPSCD Board Members and State Board of Education Members hold positions of trust and are compensated for attendance, in addition to the potential for conflict under the IPOA, an individual cannot serve as the Ombudsperson and a DPSCD Board Member or State Board of Education Member simultaneously. Individuals are free to hold these positions while seeking appointment to the Ombudsperson position, but if they are appointed they will be required to either resign from their current position or decline the appointment to the Ombudsperson position.

CONFLICT REGARDING CITY COUNCIL STAFF

One of the candidates for Ombudsperson is currently employed as staff for a sitting Detroit City Council Member. There is no ordinance or City Council rule that prohibits a Council staff member from seeking appointment to the Ombudsperson position. Both the City Council Member and the candidate have disclosed this information, although disclosure is not required under the City's ethics ordinance or Charter as the Council Member does not have a financial interest in the outcome of the vote and the candidate is not an immediate family member.^{7,8}

⁶ *Macomb County Prosecutor v Murphy*, 464 Mich. 149 (2001).

⁷ 2019 Detroit City Code, Section 2-5-31 & 2-5-32; Detroit City Charter Section 2-106.2.

⁸ Candidates for Ombudsperson may also be members of the same Fraternities and Sororities as Council Members. The Charter and the ethics ordinance do not require disclosure or recusal due to a conflict of interest in these cases unless the Council Member has a financial interest in the outcome of the vote or the candidate is an immediate family member.

The ethics ordinance provides that “a public servant shall not knowingly vote, or knowingly participate in the negotiation or making of any City contract, or any other type of transaction with any business entity in which the public servant or an immediate family member has a financial interest.”⁹ All Council Members must vote on items that come before the body unless they are prohibited from doing so by state law, the Charter, or a conflict of interest.¹⁰ Since there is no prohibition preventing the Council Member from voting in the absence of a financial interest, the Council Member must vote for a candidate to be the new Ombudsperson.

Council Members should also be aware of recent reporting that the Council staff member applying for the Ombudsperson position allegedly misrepresented themselves as being part of the incoming Ombudsperson staff to a private contractor during a meeting regarding software used by the Ombudsperson’s office.¹¹

⁹ 2019 Detroit City Code, Section 2-5-66.

¹⁰ Rules of Order for the Detroit City Council, Rule 10.10.

¹¹ <https://www.detroitnews.com/story/news/local/detroit-city/2025/09/18/detroit-ombudsman-examining-emails-involving-disgraced-detroit-city-leader-charles-pugh/86206393007/>