

CIVIL SERVICE MERIT BOARD RULES – CITY OF KNOXVILLE

Article 32– Professional Services Contract

SECTION 3201. PROCESS FOR REVIEWING CONTRACTS FOR PROFESSIONAL SERVICES AND CRITERIA FOR DETERMINING INDEPENDENT CONTRACTOR/EMPLOYEE STATUS

- I. Professional services contracts shall not be entered into for the purpose of circumventing the merit plan. When the City decides to utilize services and prepares a contract or reaches an understanding for such services, the contract or proposal should be submitted to the Board or the Board's representative for review and consideration in accordance with the procedures set out below and for the purpose of determining the true legal character of the relationship.
 - A. Upon review of the Agreement between the City and the individual or entity providing the services, the Board or its representative shall determine whether the arrangement is one of an "employee" or one of an "independent contractor". In determining whether the agreement creates an employment relationship or an independent contractor relationship, the Board or its representative shall consider, among other things, the following criteria:
 1. Whether the person receiving the benefit of the service has the right to control the manner and method of performance;
 2. Whether the person rendering the service has a substantial investment in his own equipment being utilized;
 3. Whether the person rendering the service is undertaking substantial costs to perform the services;
 4. Whether the person performing the service has an opportunity for profit dependent on his managerial skill;
 5. Whether the service rendered requires special training and skill;
 6. The duration of the relationship between the parties;
 7. Whether the service performed is an integral part of the recipient's business rather than an ancillary portion;
 8. Whether the person rendering the service has a risk of loss;
 9. The relationship which the parties believe they are creating;
 10. Whether or not the person who performs the services offers such services publicly and practices an independent trade;
 11. Whether the custom in the trade or industry is for the service to be performed on an independent contractor or employee basis;
 12. Whether the person who is receiving the benefit of the service has the right to discharge the person performing the services without cause;
 13. Whether the person who performs the services has the right to delegate his duty to others.

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- B. If the Board or its representative determines that the relationship is one of an independent contractor and the contract terms themselves are consistent with that notion, the Board would take no further action nor would it have any further involvement.
- C. If the position is such that it could be an independent contractor but the terms of the contract themselves are inconsistent therewith (i.e., the contract establishes or creates an employee relationship in the opinion of the Board or its representative) the Board would notify the City and the City would have the choice of either changing the contract to render the relationship to be one of an independent contractor and thus not subject to the Civil Service Merit System, or to proceed with that person as an employee.

SECTION 3202. CRITERIA FOR DETERMINING EXEMPTIONS OF EMPLOYEES FROM THE CIVIL SERVICE SYSTEM

If the position or relationship is determined to be one of an employee, then the Board must decide whether the position will be exempt or non-exempt (i.e., unclassified or classified) from the Civil Service Merit System. In determining whether a position will be exempt, the Board must determine that such action does not conflict with the merit system and that it is for the good of the City, which determination is within the Board's discretion. In making this determination, the Board shall consider, among other things, whether one or more of the following criteria is present:

1. The length of service to be performed. In this regard, if the service is to be performed for a period less than ninety (90) days, the position will generally be considered exempt. If, however, the service is to be performed over a period greater than ninety (90) days, the position will generally be considered non-exempt.
 2. The service is seasonal (i.e., performed only for a portion of the year).
 3. The employee, while working only seasonally, will nevertheless be repeating the employment on consistent basis.
 4. The service being performed is as a result of an emergency.
 5. The services are professional in nature (i.e., legal, medical, accounting, etc.) and where such services cannot be performed by current professional staff because of conflict, workload or otherwise.
 6. The duties and responsibilities being performed are normally performed by exempt employees, such as positions which include substantial policy-making or the handling of confidential matters.
 7. The position is in the nature of an apprenticeship or training.
 8. The position is to be filled by a full-time student attending an accredited college or university.
 9. The position has been performed in the past by other employees of the City who were considered exempt from the Civil Service Merit System.
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