



ADVISORY OPINION 21-03

Date: February 9, 2022

Decision by Commissioners:

Robert Ralston, Kellie Tetrick, Johanna Bishop, Brandon Brice, Robert Hicks,
Sally Jensen and Charles Toliver

The Ethics Commission was asked whether the Ethics Code requires an elected County official to abstain from voting on a matter which will soon be coming before the County entity to which the official was elected even though the County official has made many public statements about the matter. The matter at issue is related to a development project for a property which is physically located in the district in which the County official resides (the "Project") and which is located in the district represented by the County official.

It is noteworthy that the person who requested an advisory opinion from Commission is not the elected County official referred to in the request. With respect to advisory opinions, in Section 2.04.102.I, the Code states that the Ethics Commission shall "issue to any person, upon such person's written request, or to the appointing authority or employer of that person, upon the written request of such appointing authority or employer, an opinion with respect to such person's duties under [the Ethics Code.]"

The Commission takes this opportunity to emphasize its function and statutory authority with respect to the issuance of advisory opinions. While the Code requires the issuance by the Commission of a written response when presented with a request for an advisory opinion, it has no intention or authority to become involved in matters such as political and other concerns that fall outside the purview of the Ethics Code. Based upon the information presented to the Commission, there is no basis in the Ethics Code that requires the elected County official at issue to abstain from an upcoming vote on an aspect of the Project. There is a presumption of good faith on the part of the County official and there is no allegation of or, in the hundreds of pages of submitted documents for Commission review, any evidence showing any actual or potential financial interest on the part of the County official in the Project or the outcome of the upcoming vote. The Ethics Code presents a minimum requirement of acceptable conduct, and it is routinely met by County officials and employees. While conduct which goes above and beyond that which is required by the Ethics Code is strongly encouraged, the intention of the Ethics Code is not to unduly restrain speech or conduct of elected officials as they pursue the objectives of their constituents.

Additionally, it is not the role of the Ethics Commission to review the actions and communications of elected representatives to remove them from an upcoming vote to possibly prevent an adverse court ruling. The County has sources from which legal advice on such an issue may be requested. The Commission has no authority to determine whether caselaw or statutes other than the Ethics Code apply to the appropriateness of voting at the upcoming hearing by the elected official at issue. The Commission recommends that any interested party seeking legal advice on that non-Ethics Code issue consult with appropriate counsel. Absent a showing of, at least, the possibility that the County official may violate the Ethics Code by voting on a matter, the Commission declines to opine that the mere possibility of an adverse court ruling on appeal is a sufficient basis to require a recusal from voting on that matter.

In publishing this document, this Commission has applied the New Castle County Ethics Code, which establishes the minimum level of ethical conduct required of County officials and employees.

BY AND FOR THE NEW CASTLE COUNTY ETHICS COMMISSION ON THIS
9th DAY OF FEBRUARY 2022.

Robert W. Ralston, Chairperson
New Castle County Ethics Commission

Decision: 7 – 0, Unanimous