



## **ADVISORY OPINION 22-01**

Date: February 9, 2022

Decision by Commissioners:

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

### **Question**

Whether the County may accept a grant for a police canine if the grantor requires the placement of language related to its organization on the canine unit patrol vehicle?

### **Conclusion**

With recognition of the value of the interaction between the police department and the Community at large with respect to the high level of interest in police canines and the desire of citizens to be a part of the police canine experience, with the caveats set forth below, and absent any other connection between County officials and employees with the grantor organization, the requester may proceed as stated with the application for a grant to receive a police canine free of charge which carries with it the condition that the canine unit police vehicle display the name of the donor organization. If any additional conditions are placed on the gift, the requester is advised to contact the Ethics Commission for further review of the matter.

### **Facts**

A member of the Department of Public Safety ("Requester") contacted the Ethics Commission for an Advisory Opinion to find out whether it would violate the Ethics Code if the County received a grant from a non-profit organization which would cover the cost to the County to purchase a police dog or K9. The County currently is down one police dog and 2 (two) K9s will be retiring this year. Thus, they are working on obtaining 3 (three) new police dogs. It is commonplace for police departments across the United States to receive grants and to accept donations which cover the costs of police dogs and/or other items for the maintenance of a K9 unit, including New Castle County. Teaching a dog to become a K9 is a highly specialized process, the cost of which would be prohibitive for many police departments. Most agencies with K9's can provide only for the care, ongoing training, and transportation of their dogs. Annual budgets of most American public safety divisions do not include sufficient funding to pay for all K9-related expenses.

When a police department has a K9 unit, many of the benefits to the community from that unit are well-known because properly trained and maintained police dogs are

capable of a variety of feats which are critical to effective policing. Police dogs are often the first to enter a dangerous scene. They can restrain a suspect, making apprehension of that suspect less risky for all concerned. Police dogs can also be trained to detect the scents given off by illegal substances, explosives, accelerants, or human bodies. The stories from police officers and members of the public whose lives have been saved by K9s are too numerous to count. Further, the benefits of a K9 unit extend beyond the dogs' abilities to apprehend and detect. There is a special bond between humans and dogs, and public support for K9s is universally observed. Individuals and local groups often want to get involved and help their local governments with the costs of taking care of police dogs. That creates a unique opportunity for the public to relate to and feel invested in their police force. As police dogs perform their very practical functions, K9s also serve as ambassadors of a police department, helping to bridge the gap between the officers who enforce the law and the members of the community whom those officers have sworn to serve and protect.

New Castle County has applied for and received grants and donations over the years to cover the costs of police dogs. The County has personnel who process and track these matters so that the protocols in place are met as well as the various reporting requirements. The Requester consulted the Ethics Commission regarding the grant discussed in this Opinion because the non-profit organization from which the County would receive this grant includes a condition which would require the County to place a decal or sticker on the K9 unit vehicle, provided by the non-profit organization. It includes their logo which states that the K9 is sponsored by that non-profit organization. The decal appears to be approximately an 8-to-10-inch square. It uses white lettering on a clear background and is designed for placement on a shaded rear window of the vehicle.

In addition to training dogs for placement in police departments, the organization in question is the largest non-profit pet microchip and recovery service in the United States. They strive to keep the costs of microchipping and enrollment of pets affordable, and without charging annual fees, so that more lost pets can be reunited with their owner families. They state that they have reunited over 500,000 pets with their owners since they began in 1995, and over nine (9) million pets are registered with their locator service. They are a 501(c)(3) organization, and they state that they have donated over \$9 million toward working K9s and pet disaster relief efforts. Through the grant, the non-profit would join with an AKC Club to donate a new K9 to the County by contributing 75% of the total cost of that dog, in an amount not to exceed \$7,500.00 (seventy-five hundred dollars.) The Requester has informed the Commission that the anticipated purchase price of this new K9 is approximately \$7,000.00 (seven thousand dollars.)

As stated above, the County would like to obtain 3 (three) new K9s this year. One of the three police dogs will be purchased through a federal grant, another through the Wilmington Kennel Club, and the third K9 would be obtained through the grant discussed in this Opinion, if it is approved by the Commission. If the Commission finds that the grant

discussed in this opinion is not appropriate, the County will obtain 2 (two) new police dogs this year.

**Code or Prior Opinion:**

***Relevant Ethics Code Provisions and Case Law***

In Section 2.03.102, terms which may be relevant to this opinion are defined by the Ethics Code, as follows:

*Business* means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust or any legal entity organized for profit.

*Business with which he or she is associated* means any business in which the person is a director, officer, owner or employee; or a business in which a member of the person's immediate family is a director, officer, owner or has a financial interest.

*Compensation* means any money, thing of value or any other economic benefit of any kind or nature whatsoever conferred on or received by any person in return for services rendered or to be rendered by oneself or another.

*Conflict or conflict of interest* means conduct which is prohibited by Section 2.03.103.

*Contract* means an agreement or arrangement for the acquisition, use or disposal by the County of consulting or other services or of supplies, materials, equipment, land or other personal or real property. "Contract" shall not mean an agreement or arrangement between the County as one (1) party and a County official or County employee as the other party concerning his or her expense, reimbursement, salary, wage, retirement or other benefit, tenure or other matters in consideration of his or her current public employment with the County.

*County* means New Castle County, including any County Department.

*County Employee* means any person who receives compensation as an employee of a County Department or County row office.

*County official* means any person elected or appointed to any County office, board, commission or the New Castle County Council Audit Committee provided, however, that for purposes of Sections 2.03.103(B)(2), 2.03.103(C), and 2.03.104(C). "County official" does not include any member of a board or commission which operates solely in an advisory

capacity, and whose members are not compensated, other than reimbursement for expenses.

*De minimis* means an economic consequence which has a cost or value less than fifty dollars (\$50.00).

*Financial interest* means any interest representing more than five (5) percent of a corporation, partnership, sole proprietorship, firm, enterprise, franchise, organization, holding company, joint stock company, receivership, trust, or any legal entity organized for profit.

*Gift* means anything that is received without consideration of equal or greater value. ... A gift is considered accepted upon receipt or control or direction unless it is promptly returned in its entirety. An email invitation, unless specifically accepted, is not considered a gift.

*Governmental body* means any department, authority, commission, committee, council, board, bureau, division, service, office, official, administration, legislative body, or other establishment in the executive, legislative or judicial branch of a state, a nation or a political subdivision thereof or any department performing a governmental function.

*Governmental body with which a County official or County employee* is or has been associated means the governmental body within County government by which the County official or employee is or has been employed or by which the County official or employee is or has been appointed or elected and subdivisions and offices within that governmental body.

*Income* means any money, thing of value or other pecuniary benefit received or to be received in return for, or as reimbursement for, services rendered or to be rendered. The term does not include gifts; governmentally mandated payments or benefits; retirement, pension or annuity payments funded totally by contributions of the County official or employee; or miscellaneous, incidental income of minor dependent children.

*Negligible value* means value of less than twenty-five dollars (\$25.00).

*Person* means a business, governmental body, individual, corporation, union, association, firm, partnership, committee, trust, joint venture, club or other organization or group of persons.

*Private enterprise* means any activity conducted by any person, whether conducted for profit or not for profit and includes the ownership of real or personal property. Private enterprise does not include any activity of the federal, State or local government or of any department, authority or instrumentality of the federal, State or local government.

*Reasonably foreseeable* means an event which should be expected or anticipated based upon credible past and present facts known to a reasonable observer or participant at the time a decision is made or an action taken.

The New Castle County Ethics Code prohibits conduct on the part of County officials or employees which creates the appearance of impropriety even where no direct conflict of interest is present. Specifically, conduct which creates an appearance of impropriety is prohibited by Section 2.03.104.A of the New Castle County Code.<sup>1</sup> To determine if an appearance of impropriety exists, the Delaware courts have stated that “[t]he test is... if the conduct would create in reasonable minds, with knowledge of all relevant facts, a perception that an official’s ability to carry out [his or] her duties with integrity, impartiality and competence is impaired.” *Hanson v. Delaware State Public Integrity Com’n*, 2012WL3860732, at \*16 (Del.Super. 2012), *aff’d*, 69 A.3d 370 (Del.Super. 2013); and “[t]he test for appearance of impropriety is whether the conduct would create in reasonable minds, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, a perception that the [official’s] ability to carry out [the official’s] responsibilities with integrity, impartiality and competence is impaired.” *In re Williams*, 701 A.2d 825, 832 (Del.Super. 1997). The courts have advised the Commission to look at the totality of the facts presented, and this Commission has historically applied this standard when reviewing the conduct of County officials and employees.

It is a violation of the New Castle County Ethics Code if a County official or employee uses his or her office or employment for his or her personal or private benefit, the benefit of a member of his or her immediate family, or a business with which he or she is associated.<sup>2</sup> The Ethics Code’s conduct rules in Section 2.03.104.A prohibit exercise of official authority which creates an appearance that the decisions or actions of a County official or employee are influenced by factors other than the merits of the matter for the decision. This prohibition exists because such conduct undermines public confidence in the impartiality of the individual or governmental body with which the employee or official is associated.

The Code recites special prohibitions on County officials concerning their involvement with outside interests which interact with the County government. Section 2.03.103.B.1 prohibits any County official or employee from “represent[ing] or otherwise assist[ing] any private enterprise with respect to any matter before the County Department with which the employee or official is associated by employment or appointment.” Further, Section 2.03.103.B.2 prohibits the official from representing or assisting any

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<sup>1</sup> New Castle County Code Section 2.03.104.A states: “No County employee or County official shall engage in conduct which, while not constituting a violation of Subsection 2.03.103.A.1 undermines the public confidence in the impartiality of a governmental body with which the County employee or County official is or has been associated by creating an appearance that the decisions or actions of the County employee, County official or governmental body are influenced by factors other than the merits.”

<sup>2</sup> *New Castle County Code* Section 2.03.103.A.1.

private enterprise with respect to any matter before the County. This restriction extends to non-profit organizations as well as private businesses or private concerns.<sup>3</sup>

### ***Prior Commission Opinions***

In Advisory Opinion 18-12, the Commission was asked whether the policy as proposed by the County Administration on the formal, public recognition of donors' unsolicited gifts to the County met the requirements of the Code. In that Opinion, the County had been approached by a nonprofit entity, along with some for-profit companies, to perform without compensation some construction work on a structure located in a County park. The County wanted to accept that gift, and to acknowledge these donations of work hours, materials, and expertise publicly and formally, as well as other unsolicited donations made to the County in the future, in a manner which would be uniform throughout County government, and in compliance with the Ethics Code and any other applicable laws, rules, and regulations. In determining that the policy as proposed was not in violation of the Code, the Commission cautioned that the "[a]cceptance of gifts by County officials and employees often causes negative perception issues on the part of the public as it gives rise to questions of trustworthiness and impartiality." The Commission stated further that in exercising the proposed policy to publicly recognize the donor of such gifts to the County, the Commission stated that "due care must be taken in the administration or execution of the Proposed Policy so as to avoid prohibited conflicts of interest, the appearance of impropriety, and any other potential violation of the Ethics Code." The Commission further cautioned that its approval of that policy, in general, was not a substitute for a case-by-case review of the propriety of the acceptance of any particular gift under the Ethics Code. Nor did that approval qualify as approval by the Commission of the policy as applied or executed in any specific set of circumstances. The Commission encouraged any County official or employee to consult the Commission before accepting any gift which may cause an appearance of impropriety and possibly violate the Ethics Code.

In Advisory Opinion 07-08, a County official requested the Commission's opinion about whether a two (2) year waiver of charges by a communication company for sole use of one of its cable access television channels by the County in exchange for the right to solicit and retain all funds from entities wishing to advertise on that channel is a 'gift' under the Ethics Code and whether acceptance of such a 'gift' would create an appearance of impropriety. The Commission determined that while the facts presented did not involve a 'gift' as defined by the Ethics Code, the issues involved an

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<sup>3</sup> *New Castle County Code* Section 2.03.1.03.B.2, and 3. *Prohibitions relating to conflicts of interest.*

B. Restrictions on representing another's interest before the County.

2. No County official may represent or otherwise assist any private enterprise with respect to any matter before the County. This prohibition is to be considered personal to the County official and is not, for purposes of the New Castle County Ethics Code inly, deemed to impact other members of a firm, business, or other employer by which the County official is employed.

3. This subsection shall not preclude any County employee or County official from appearing before the County or otherwise assisting any private enterprise with respect to any matter in the exercise of his or her official duties.

“unprecedented type of exchange between a vendor and the County.” The Commission found that the actual and proposed restrictions for advertising on the public access cable television channel mitigated against the creation of an appearance of impropriety. In its Opinion, the Commission stated:

The Commission standard for judging an appearance of impropriety is whether the conduct in question, i.e., the acceptance of the financial waiver in exchange for the use of its information and good name, "would create in reasonable minds, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, a perception that [an] official's ability to carry out [official duties] with integrity, impartiality and competence is impaired." *In re Williams*, 701 A.2d 825, 832 (Del. Super. 1997). In determining the relevant circumstances, the courts advise the Commission to look at the totality of facts. Here, that totality includes the Executive's decision that the addition of a cable channel as a means communication with the citizens of the County furthers the public interest. That short term public good must be balanced against the risk of enhancing the image of an advertiser at the expense of the public confidence in the integrity and reputation of the County and its administration... .

The Commission considered, in Advisory Opinion 06-09, whether the Chief Administrative Officer of the County may direct subordinates to solicit funds or services from private businesses for a County event if some of the target entities are regulated by or do business with the County or may be reasonably foreseen to do so in the next three years; and, if the Chief Administrative Officer may solicit such businesses, whether those entities may be identified in advertising as "co-sponsors" of the County event. The Commission decided, assuming that the County targeted a population that was representative of a broad swath of County individuals and businesses for solicitation, the issues included whether a donation from a vendor or supplier may be accepted, whether solicitation would create an appearance that the donors would have an improper expectation of favor in return for a donation, and whether reasonable contributors would feel forced to donate to maintain competitive status regarding County business or regulation. Ultimately, the Commission found that any appearance of impropriety could be minimized if the following conditions were met: the Executive must comply with the ordinance by issuing a written policy authorizing the solicitation for the Ice Cream Festival which identified the public benefit; cash donations would not be accepted; no public or private identification of the donors as joint sponsors could be allowed; a written solicitation, emphasizing the voluntary nature of the contribution and the absence of any effect on current or future County relationships, should be made to all potential appropriate donors by the County Executive on behalf of the citizens of the County; a donor must provide written corroboration identifying and valuing the donation at the time it is made; the employee or official who accepts the donation may not have provided, and his or her department may not provide in the reasonably foreseeable future, direct

services for the donor; and a contemporaneous public document is maintained which lists the donors, type and value of all donations.

In Advisory Opinion 10-10, the Commission considered whether an entity of New Castle County, such as a committee or subcommittee of County Council, may accept a gift made for the benefit of the public. The Commission concluded that the Code permits agents or representatives of County Council to accept gifts made to the people of New Castle County as long as acceptance of the gift does not create an appearance of expectation or favoritism for the donor and the gift is recorded in the public gift log maintained by Council. More specifically, in that opinion, the requester asked whether a Council entity was permitted to accept donations from private donors to pay an expert to make a presentation at a public meeting sponsored by Council. The requester informed the Commission that the expert was not associated with the donors, the presentation would address matters of public concern, it would not be designed to advance the interests of the donor, and, in the opinion of the requester, the type and size of the gift would not create an expectation of favoritism for the donor. Applying the express provisions of the Ethics Code and the reasoning found in past Commission opinions which involved both solicited and unsolicited proposed gifts to the County, the Commission concluded that “[i]f a gift to the citizens creates the impression that the County is endorsing the donor or that because of the type or size of the gift, the public would reasonably believe that the donor would have improper expectations of favor from County employees or officials, the gift may not be accepted.”

In Final Order 11-02, the Commission found a violation of Code Section 2.03.104.J in the failure to create a written policy covering the solicitation of regulated entities. The Commission concluded that a “reasonable person would not believe that in this case the type of gifts solicited for the benefit of the public were of an improper nature in themselves. However, the reasonable person reviewing the facts of this case would conclude that the failure of the official's agency to enact a clear written policy for solicitation as well as its lack of oversight of the subcommittee were the root causes of the violation of the written solicitation rule and ensuing creation of an appearance of impropriety.” Thus, the Commission found that an Ethics Code violation had occurred in part because a County department failed to create a procedure in conformity with the Ethics Code.

### **Analysis**

The review of an Ethics Code issue is fact-sensitive, and the Commission applies the relevant law to the facts presented. This matter requires the examination of the laws which regulate gifts,<sup>4</sup> and the acceptance of gifts by County officials and employees is

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<sup>4</sup> It could be argued that this matter does not involve a gift. A gift is defined in the Code as “anything that is received without consideration of equal or greater value... .” Through this grant, the County would be receiving something with a reported market value of \$7,000 (seven thousand dollars.) While it is reasonable to conclude that the non-profit would benefit in some way from the County’s placement of the decal on its K9 vehicle, any such benefit is too speculative to calculate. Because it is impossible for the Commission to determine whether the



disfavored by the Ethics Code. When the Code does not specifically allow the acceptance of a particular gift, the Commission may determine that acceptance of that gift may be allowed if (1) there is no conflict of interest arising out of a personal and/or financial interest in the matter on the part of the County official or employee involved or (2) when there is little likelihood that the acceptance of the gift will create a perception on the part of a member of the public that the County official or employee has engaged in improper behavior. In making that determination, the Commission stands in the place of a reasonable member of the public with knowledge of the relevant facts. Ultimately, the Commission will not approve proposed conduct on the part of a County official or employee which involves decision-making that is not based on the merits of the matter as such conduct would be likely to cause the public to lose faith in the integrity of County government.

The Ethics Code allows for the acceptance of gifts by a County government representative on behalf of the public.<sup>5</sup> The Commission thanks the Requester for consulting with the Commission on this novel question. Through this grant from the non-profit organization, the County would clearly benefit. It is possible that the non-profit would benefit as well. The Commission believes that even with the condition imposed by the non-profit organization that the County place the non-profit's decal on the K9 vehicle, the facts presented in this request for an Advisory Opinion fall into a permitted category of gifts. Police dogs provide continual benefits to the citizens of New Castle County, and to County government and the New Castle County Police Department. The non-profit at issue here is not a County vendor. The grant application is straight-forward. The non-profit is not regulated by the County and its headquarters is hundreds of miles away in a different state. There is no showing of any personal interest in this matter on the part of a County official or employee, nor is there a conflict of interest as defined by the Ethics Code.<sup>6</sup> The Public Safety Department regularly applies for and receives grants from many different sources, and it has personnel dedicated to oversight of such matters to ensure that protocols and reporting requirements are met. On balance, the benefits to all concerned outweigh the potential for a perception that the County has engaged in conduct which violates the Ethics Code.

Meeting the condition in the grant to place the non-profit's decal on the County's K9 vehicle will, in effect, provide free advertising of that non-profit organization. It is possible that someone may see that decal on a New Castle County police vehicle, and they may decide to become a member or customer of that non-profit, thus, providing an unknown amount of revenue which would benefit that non-profit organization. That is a potential benefit to the non-profit organization, and the value of that benefit cannot be reasonably calculated. If someone sees that decal and registers their pet with the non-

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County is receiving something "without consideration of equal or greater value," as an exercise of caution, the Commission is treating this matter as one which involves a gift.

<sup>5</sup> See *New Castle County Code* Section 2.03.104.I.2.

<sup>6</sup> See *New Castle County Code* Section 2.03.103.

profit for tracking purposes, however, that is a benefit to the public at-large, for free or at a nominal cost to the pet owner.

Additionally, social media could play a role in this scenario because the police department could post photos online which include the K9 vehicle and the non-profit's decal. Thus, the County's display of the non-profit's decal could be seen by people who live outside of New Castle County. The Requester, however, has informed the Commission that while they would be willing to place the decal on their K9 vehicle, they would not engage in any other conduct which could be perceived as conduct which purposefully promotes the non-profit organization.

### **Finding**

The Commission finds that a reasonable person with knowledge of the relevant facts would not perceive the acceptance by the County of the gift described in this Opinion as improper or unethical. Both the County and the non-profit organization will benefit from the County's acceptance of this gift, along with the County's compliance with the condition in the grant of placing the decal of the non-profit organization on the K9 vehicle. Both the grantor and the grantee will benefit, but it is reasonable to conclude that the public will benefit as well, and possibly more than either the County or the non-profit organization. There are no factors present which demonstrate any conflict of interests or improper motives. And there are protocols in place which will mitigate against any potential perception on the part of the public that County officials or employees are behaving in a way which violates the Ethics Code.

For this Opinion, the Commission has relied upon the facts as supplied by the Requester. Again, the Commission thanks the Requester for recognizing the need to seek Commission approval before moving forward on this matter. The Commission strongly advises the County Police Department to contact the Commission before they do anything more than simply placing the non-profit's decal on a K9 vehicle. This Opinion is limited to the facts described here and a review by the Commission of a similar, yet different, set of circumstances could result in a different conclusion. The use of County resources and property to meet the objectives of any private entity is problematic and should not be engaged in without deliberate consideration of all possible outcomes. The Commission urges all County officials and employees to contact the Commission prior to engaging in any conduct in that regard which has not yet been reviewed and approved by the Commission.

In rendering this advisory opinion, 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  
9<sup>TH</sup> DAY OF FEBRUARY 2022

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Robert W. Ralston, Esquire  
Chair, New Castle County Ethics Commission

Decision: 6 – 1