



ADVISORY OPINION 25-01

Date: April 9, 2025

Decision by Commissioners:

Johanna Bishop, Robert Hicks, Sally Jensen, George Thompson, Charles Toliver and Allan Zaback

Question

Whether a New Castle County police officer may accept a cash award for being named 'officer of the year' from a local nonprofit veteran's service organization?

Conclusion

No. For Ethics Code purposes, a cash award is likened to a gift. The Ethics Code forbids the acceptance by New Castle County officials and employees, including members of the Department of Public safety, any gifts of cash in any amount.

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 a local veteran's service organization awarded a cash award to a New Castle County police officer for being nominated by their peers as the "officer of the year." It is unclear what the amount of the award would be but the amounts included as possible awards in the submission from the requester included \$300.00 or \$500.00. While this award would certainly be a well-deserved recognition of a job well done, the Ethics Code, in Section 2.03.104.H.2, expressly prohibits the acceptance by any county employee or official (except as a political contribution for a campaign for elective office.) As it has in the past, the Ethics Commission can work with the service organization to figure out a way to reward the intended recipient without causing an Ethics Code violation for that recipient, if desired.

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:

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.

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).

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.

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.¹ 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

¹ 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."

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.² 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 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.³

Section 2.03.104.H states:

H. New Castle County discourages the acceptance of gifts from the public by County employees or County officials. No County employee or County official shall accept any compensation, gift, payment of expenses, promise of future financial benefit, or any other thing of monetary value which is intended or received to influence the vote, official action or judgment of the recipient or which creates the reasonable perception in the public that the vote, official action

² *New Castle County Code* Section 2.03.103.A.1.

³ *New Castle County Code* Section 2.03.103.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.

or judgment of the recipient would be influenced or impaired by the gift. An unsolicited gift which is promptly returned in its entirety is not considered accepted by the recipient.

In addition, gifts are prohibited in the following circumstances:

1. Any gift of greater than de minimis value which is not promptly recorded in a public gift log.

2. No gift of cash shall be accepted other than a political contribution otherwise reported as required by law.

3. No gift shall be accepted by a County official or employee for performing an official duty or service or as an incentive to perform an official duty or service unless the gift is a public and commemorative gift of de minimis value in honor of public service or unless the gift is tendered by a governmental source or association of governmental sources. The commemorative gift shall be promptly recorded in a public gift log.

4. Gifts of greater than negligible value from entities doing business with, regulated by, or which may be reasonably foreseen to do business with or be regulated by the County within the next three years, with the exception of gifts described in Subsections I.5. through I.7. of this Division, shall not be accepted by officials, employees, or governmental departments unless a prior Advisory Opinion is sought from the Ethics Commission regarding compliance with the Code of Ethics. Any such gift or donation of other than negligible value which is accepted following the receipt of an Opinion of the Commission shall promptly be recorded by the recipient in a public gift log.

5. County officials or employees in supervisory positions shall not accept gifts from individual persons they supervise or from individual employees in a lower pay scale other than on an infrequently occurring milestone occasion (such as birth, death in family, marriage, divorce, retirement, casualty) or a de minimis hospitality gift on social occasions held outside of the workplace. On any other occasion, receipt of gifts shall be limited to group gifts, in which the amount contributed is both voluntary and of a de minimis amount per individual, and the names of the individual donors are not disclosed to the recipient. Gifts tendered as a result of a relationship described in Subsection I.9. shall be an exception to this rule.

Prior Commission Opinions

In Advisory Opinion 05-14, the requester asked the Ethics Commission whether a County employee may accept a gift valued in excess of \$75.00 for emergency service to a business performed when the employee was on his personal time but officially on call 24 hours a day. The Commission found that the employee could not accept the gift valued in excess of \$75.00 from the business but the business could choose to honor the employee's heroic conduct by donating a gift to charity of the business's choice. In its opinion, the Commission stated: "[T]he employee in the request at issue did not perform his acts of assistance to the business with any intent to receive such a benefit and the business is not offering the gratuity to him to induce improper official conduct. However, if the employee knowingly accepts a pecuniary benefit from a client of his agency for performing his compensated county duties, he would be receiving an unwarranted

and economically significant benefit because of his official position and would violate the conflict provisions [in the Code] which creates a rebuttable presumption of a knowing or willful violation of the Code if the exercise of official action creates a personal or private benefit to the County employee.”

In Advisory Opinion 08-01, the Ethics Commission was asked whether an employee’s acceptance of a monetary gift for performing duties on her own time for a non-profit which does business with the County would violate the Ethics Code. The Commission determined that the employee would violate the gift provisions of the Ethics Code and would create an appearance of impropriety if she accepted a monetary gift from the nonprofit which does business with the County for activities which were intertwined with and indivisible from the duties for which she received payment for her work for the County. In making this determination, the Commission noted that if the employee accepted the monetary gift from the nonprofit, a reasonable member of the public would believe that the employee could not exercise her duties impartially as far as this nonprofit was concerned. The Commission stated further: It is understandable that the employee is highly regarded by the nonprofit because of her admirable and selfless devotion to its charitable purpose. ...[T]he employee could accept an inscribed plaque of *de minimus* value and the nonprofit could make a financial contribution to a charity of its choice in honor of the employee.”

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 “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... .

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 Advisory Opinion 06-07, the Commission was asked whether a conflict of interest would exist or an appearance of impropriety created if a County employee accepted a gift of a shirt, hat, or tickets from a County vendor if the employee had no authority to affect county business relationships with that vendor. The Commission decided that it would not violate the Ethics Code if the employee accepted a gift of negligible value from the vendor under the described circumstances but the employee must also comply with the arguably more strict departmental administrative personnel policy and conform his conduct to the subsequent decision of the general manager of his department.

Analysis

The request in this case is controlled by the sections of the Ethics Code in the Code of Conduct which cover the acceptance of gifts, Section 2.03.104.H, and prior Commission opinions. Section 2.03.104.H.2 expressly prohibits the employee from accepting any gift of whatever value if it is cash (or cash equivalent, e.g., gift cards, money orders, checks, savings bonds, bank accounts, etc.) Further, Section 2.03.104.H.3 prohibits an employee from accepting a gift for performing County functions. In this case, it appears that the basis for the proposed award would include, at least in part, conduct which the intended recipient performed while working for the County and for which that employee was paid by the County. The proposed award would be regarded as a substantial reward for performing County duties for which the officer was already paid. In addition, the value of the gift under consideration here is an amount large enough that it could reasonably create a personal feeling of gratitude in the recipient toward the donor. A reasonable member of the public would understand that such a gift could create a sense of obligation toward the donor which weakens a County employee’s ability, and perhaps also that of their coworkers, to provide impartial service to the donor.

Finding

The proposed cash award from the local nonprofit organization is meant well but acceptance of such a gift by any County official or employee would violate the Ethics Code as acceptance of cash gifts is expressly prohibited.

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 9TH DAY OF APRIL, 2025.

Robert Hicks, Chairperson
New Castle County Ethics Commission