



ADVISORY OPINION 25-09

Date: January 14, 2026

Decision by Commissioners:

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

Question

Whether an employee in the Assessment division of the Finance Department who has a Delaware real estate license may sell real estate on a part-time basis when she is not working for the County without violating the Ethics Code?

Conclusion

No. An employee working in the Assessment division may not sell real estate in Delaware as a part-time job without violating the New Castle County Ethics Code.

Facts

The requestor is a relatively new County employee who works in the Assessment division as an assessor. Before she was hired by the County Assessment division, the requester held a real estate license in Delaware and engaged in sales of property. After she began working for the County, she was advised by a co-worker to consult the Ethics Commission before continuing any real estate sales activities. The requestor has asked the Ethics Commission whether it would violate the Ethics Code if she sold real estate in Delaware.

Code or Prior Opinion:

Relevant provisions in the definition section of the Ethics Code, Section 2.03.102, include the following:

Appearance of impropriety means conduct which is prohibited by Section 2.03.104A.

Authority of office or employment means the actual power provided by law, the exercise of which is necessary to the performance of duties and responsibilities unique to a particular County office or position of County employment.

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.

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.

Confidential information means information not obtainable from reviewing a public document or from making inquiry to a publicly available source of information.

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

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.

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.

Recusal means, including but not limited to, withdrawing from sponsorship, deliberation, vote, research, preparation, discussion, negotiation, contract formation, policy making, planning, decision making, and/or implementation of a matter. It also includes a prohibition on conducting, in an official capacity, any private or public discussion of a measure raising a conflict or improper appearance. As soon as a potential conflict or improper appearance arises or is recognized, an official or employee must end direct or indirect participation, advice, input, direction, recommendation, or discussion, as well as refraining from vote, if the person is not an elected official. Elected officials may choose to avoid recusal and may vote if they follow the alternate process described in Subsection 2.03.103.A.2.

Regulated by New Castle County means that an entity operating in New Castle County as a business or nonprofit organization requires approval from or regulation by New Castle County in order to lawfully conduct one or more business activities.

Regulation includes, but is not limited to, obtaining permits, registering residential rental property, or trade licensing, but does not include the payment of property taxes, sewer service charges, individual library use charges, park fees, animal licensing fees or other similar fees.

Regulatory board member means a person nominated or appointed to one of the following entities: Board of Adjustment, Board of Assessment Review, Ethics Commission, Historic Review Board, License, Inspection and Review Board, Pension Board, Planning Board, New Castle County Audit Committee, New Castle County Financial Advisory Council.

Code of Conduct Provisions

Certain portions of the New Castle County Ethics Code are relevant to this opinion, including Sections 2.03.101.B; 2.03.103.A.1 and A.2; 2.03.104.A:

Sec. 2.03.101. - Purpose of Division.

D. This Division is intended to establish a minimum standard for ethical conduct and financial disclosure. Elected officials may superimpose conduct rules for officials and employees which are more strict, but not less strict, than these minimum standards. The Ethics Commission has jurisdiction to decide whether superimposed rules fall below the minimum standards expressed in this Division.

Sec. 2.03.103. - Prohibitions relating to conflicts of interest.

A. Restrictions on exercise of official authority.

1. No County employee or official knowingly or willfully shall use the authority of his or her office or employment or any confidential information received through his or her holding County office or employment for the personal or private benefit of himself or herself, a member of his or her immediate family or a business with which he or she is associated. This prohibition does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the County official or employee, a member of his or her immediate family or a business with which he or she or a member of his or her

immediate family is associated. There will be a rebuttable presumption of a knowing or willful violation of this section if the action benefits the County official or employee, his or her spouse, or his or her dependent children (whether by blood or by law).

2. In any case where a person has a legal and/or statutory responsibility with respect to action or nonaction on any matter where the person has a personal or private interest and there is no provision for the delegation of such responsibility to another person, the person may exercise responsibility with respect to such matter, provided that promptly after becoming aware of such conflict of interest, the person files a written statement with the Commission fully disclosing the personal or private interest and explaining why it is not possible to delegate responsibility for the matter to another person. If the matter is one in which the legal and/or statutory responsibility requires the person to vote upon the issue, the written statement filed with the Commission shall be read into the public record prior to the time the person's vote is cast. Any person choosing to abstain from voting on an issue where or she has a conflict shall state the reasons for his or her conflict on the record; an abstaining voter need not file the written statement with the Commission required when acting on, rather than abstaining from, an issue involving a conflict.

Sec. 2.03.104. - Code of conduct.

A. 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.

E. No County employee or County official shall engage in any activity beyond the scope of such public position which might reasonably be expected to require or induce such County employee or County official to disclose confidential information acquired by such employee or official by reason of such public position.

F. No County employee or County official shall, beyond the scope of such public position, disclose confidential information gained by reason of

such public position nor shall such employee or official otherwise use such information for personal gain or benefit

Case Law and Commission Precedent

The New Castle County Ethics Code prohibits conduct on the part of County officials or employees which either creates the appearance of impropriety even where no direct conflict of interest, as defined by the New Castle County Code, is present. Specifically, conduct which creates an appearance of impropriety is prohibited by Section 2.03.104(A) of the New Castle County Code. 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.Supr. 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.

Over thirty years ago, the Ethics Commission issued an Advisory Opinion on this very question. In Advisory Opinion 93-03, the Ethics Commission determined that an assessor employed by the Assessment division may not work simultaneously in the private sector as a real estate sales agent or appraiser without violating the Ethics Code. In that opinion, the Commission stated:

The Commission concludes that the assessor’s moonlighting would create a serious ‘appearance of impropriety.’ The close relationship between assessing property for County tax purposes and assisting prospective buyers and sellers in the acquisition and sale of property creates the appearance that assessors in the Assessment Division are influenced by factors extraneous to the merits, e.g., whether the rate at which a particular parcel of property is assessed is consistent with the assessor/realtor’s private clients’ interests.

While the assessor/realtor might perform his or her official duties without regard to private clients’ interests and while the assessor/realtor might not seek to influence overtly fellow assessors in the performance of their official

duties, nevertheless, a very negative public perception would be created. It is this negative perception, eroding public confidence in government, which lies at the heart of the 'appearance of impropriety' provision. An assessor's moonlighting as a realtor or appraiser would seriously undermine public confidence in the impartiality of the Assessment Division by creating the appearance that assessments 'are influenced by factors other than the merits.'

Analysis

As noted above, the Ethics Commission issued an Advisory Opinion on the question of whether an assessor may sell real estate part-time without violating the Ethics Code three decades ago. Nevertheless, the Commission commends the requestor for heeding the advice of her co-worker and consulting the Ethics Commission on this question before entering into the conduct at issue.

It was not uncommon even thirty years ago for County employees to have weekend or part-time jobs in addition to their County work, but it has become even more normalized in today's society for full-time employees to engage in several different types of employment simultaneously. The Ethics Commission is understanding of the desire and/or the need to take part in outside employment as a County official or employee, but it almost always raises, or triggers, issues covered by the Ethics Code. It continues to be important, therefore, for any County official or employee to consult with the Ethics Commission before engaging in outside employment.

Real estate sales and marketing is a complicated and specialized business which involves both public and confidential information. Real estate assessment is equally challenging. The County Assessment division employees are privy to information about every single piece of real estate in New Castle County. Much of that information is publicly available but some of it is confidential. The Ethics Code prohibits a County official or employee from personally benefiting from confidential information learned through their County office or employment. Profiting from confidential information acquired through County employment is a violation of several sections of the Ethics Code.

The Commission does not doubt the requestor's integrity and this opinion should not be construed, in any way, as an implication otherwise. But it would be virtually impossible to determine whether an Assessment division employee used confidential information learned through their County employment in outside employment transactions involving Delaware real estate if, for instance, the issue was brought to the attention of the Commission in an Ethics Code complaint. Given the nature of the work in the Assessment division, it would be reasonable for a member of the public to question

whether the requester is using confidential information which she acquired through her County employment in that real estate transaction, even if the requester did not use any information she learned through her County employment. Creating an impression held by members of the public that Assessment division employees are personally profiting from part-time real estate sales enhanced by confidential County information would erode public confidence in the integrity of the Assessment division and County government in general.

Further, if an Assessment division employee engages in real estate sales as a part-time business on the side, it could lead to members of the public questioning whether private market forces have influenced the requestor's assessments of properties which she performed as part of her County job and whether such influences were improper for those purposes. Indeed, it could bring the work of the entire division into question in that regard. Making matters even more complicated, currently, the County is engaged in a court-ordered real estate reassessment countywide which has received much public attention and comment. It would not serve the best interests of the residents of New Castle County or County government to add yet one more reason, even a potential one, for the public to doubt the integrity of the County's Assessment division. Thus, the Ethics Commission has determined that the requestor's participation in real estate sales as a part-time, outside employment activity would violate the Ethics Code because it would create an appearance of impropriety, and/or it may involve a profit-based conflict of interest, both in violation of the New Castle County Ethics Code.

Finding

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. To avoid violating the Ethics Code, the requestor must refrain from real estate sales activities while working for the Assessment division of the Finance Department of New Castle County government.

BY AND FOR THE NEW CASTLE COUNTY ETHICS COMMISSION

ON THIS 14TH DAY OF JANUARY 2026

Robert Hicks, Chairperson
New Castle County Ethics Commission

Decision: Unanimous

