



ADVISORY OPINION 25-03

Date: May 14, 2025

Decision by Commissioners:

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

Question

Whether an elected County official may collect registration fees paid by constituents to attend events held by a local non-profit organization without violating the Ethics Code when the County official either serves on the board of the nonprofit or is otherwise affiliated with the nonprofit?

Conclusion

The Ethics Commission advises the requestor (and all County officials and employees) against serving a local nonprofit organization by collecting its registration or other fees. It is better if County officials (or employees) serve nonprofits in ways which do not involve the collection of money. Collecting money by a nonprofit should be performed by someone other than a County official (or employee) as it is likely to create confusion among the observing public as to whether the County official has a conflict of interest or is acting in their own self-interest in violation of the Ethics Code. Thus, the Ethics Commission recommends that County officials (and employees) not involve themselves in the financial aspects of nonprofits absent a written advisory opinion from the Commission approving such specific conduct before it takes place.

Facts

The requestor is a high ranking, elected County official. She is active in her community outside of her work for New Castle County and she is affiliated with local nonprofits. Some nonprofits hold events for which there are registration fees and/or fees for attendance. The requestor has asked the Ethics Commission whether she would be able to assist the nonprofits by collecting such registration and other fees on behalf of the nonprofits without violating the Ethics Code.

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.

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

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 a 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.

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.

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 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.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.

In Advisory Opinion 24-03, the requester asked whether they could proceed with their appointment to the board of a local community development financial institution (“CDFI”). The Commission decided that the requester must disclose the potential areas of conflict or improper appearance to both the CDFI and County government, and the requester must recuse themselves from any activities which may cause the appearance of conflict, including policy making, promotion, giving of advice, or other activity concerning the CDFI’s potential or actual interaction with the County. The requester must clearly disclose to all relevant parties, with respect to their participation and activities with the CDFI, that, at no time, they are acting or speaking on behalf of the County. Similarly, the requester must clearly disclose to all parties, with respect to their participation and activities with the County, that, at no time in their County job, they are acting on behalf of the local CDFI.

In Advisory Opinion 10-11, a County employee sought advice from the Commission as to whether he may accept a position on the board of a nonprofit given that his department made recommendations on grants to members of a larger community which the nonprofit represented. In its opinion allowing the employee to serve on the board, the Commission noted that the “[b]oard’s purpose is limited to making advisory operational recommendations regarding a division in the requester’s department but those recommendations are not made to the department but to a separate County entity...which has discretion to support, change or ignore [the recommendations].” This service on the board, however, was conditioned upon the employee’s recognition and knowledge that he must recuse himself from any matters which involved either the County or the nonprofit or any recommendations made to his department by the board.

In Advisory Opinion 15-03, the Commission was asked whether an appointed official could serve as a member of a nonprofit board which has occasionally received federal funds that are administered by the official's department. In concluding that the official may join the board of the nonprofit, the Commission required the official to disclose potential areas of improper appearance to both the nonprofit and the appropriate County authority and to recuse him or herself from any activities which may cause the appearance of conflict, including policy making, promotion, or other activities concerning the nonprofit's relationship with the County.

In Advisory Opinion 13-02, a County employee wanted to serve as an unpaid volunteer to advise a nonprofit on its budgetary and fiscal matters. Because the requester would serve in a volunteer capacity, with no financial benefit to himself or his family, the Commission approved the request on the condition, however, that the requester recuse himself from involvement in any matters associated with issues of change in valuation policy by the County that may affect the nonprofit.

Analysis

County employees and officials are encouraged to participate in social and charitable community functions. The Ethics Code, at Section 2.03.101.B, states:

It is recognized that many public officials are citizen-officials who bring to their public offices the knowledge and concerns of ordinary citizens and taxpayers. They should not be discouraged from maintaining their contacts with their community through their occupations and professions. Thus, in order to foster maximum compliance with its terms, this Division shall be administered in a manner that emphasizes guidance to public officials and public employees regarding the ethical standards established by this Division.

Every County official and employee must consider the Ethics Code to determine whether their volunteer activities might create a conflict, or even the appearance of a conflict, with their County duties because both an actual conflict (as defined by the Code) or the appearance of a conflict can violate the Ethics Code. Consulting the Ethics Commission for guidance before the County official or employee takes any action on these issues is strongly encouraged.

In Section 2.03.103.A of the Code, using one's County office for personal or private financial benefit is prohibited. Further, Section 2.03.104.A.1 prohibits the creation of an impression in the reasonable mind of a member of the public that an official or employee's official action is affected by personal interests which impairs his or her competence, integrity and honesty, or that the department in which he serves will look as though it is showing partiality in a given matter.

Prior Commission decisions are instructive on the issues raised by this request for an advisory opinion. The requestor is an elected official who is involved in local community activities, including those organized by nonprofits with which she is associated. While there is no evidence that the requestor has any financial interests in the local nonprofits, the question posed to the Commission involves the collection of money when people register for nonprofit events. Whenever money changes hands in a setting which combines the official's public duties with their private lives, the potential exists for members of the public to misunderstand the situation. Those kinds of misunderstandings easily erode the public's confidence in the integrity of the County's public officials.

Section 2.03.104.A.1 prohibits the creation of an impression in the reasonable mind of a member of the public that an official or employee's official action is affected by personal interests which impairs her competence, integrity and honesty, or that the department in which she serves will look as though it is showing partiality in a given matter. The Ethics Code makes it clear that it is important that the requestor's service in this manner must not "undermine 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," as prohibited in Ethics Code Section 2.03.104.A. In other words, to avoid violating the Ethics Code, the requestor will be required to diligently keep separate her work for the County from her volunteer service for a nonprofit.

A possible scenario which must be prevented is one where a member of the public believes that the nonprofit is receiving special treatment from the County because of the requester's service for the nonprofit. Another scenario to avoid is one where a member of the public believes that because of the requester's service in the nonprofit, the County, someone working for the County or the requester herself is receiving special treatment from the nonprofit because of the requestor's connection with County government. To avoid those scenarios, the requestor must do as much as reasonably possible to prevent possible confusion which may be caused by her simultaneous service to both New Castle County and a local nonprofit. In her work for the County, the requester is likely to come into contact with the same people as the nonprofit may also service. As such, it is imperative for the requester to very carefully delineate her role as a County official from her role as a nonprofit member. Beyond that, the requester must do what she can to assure that the people she works with at the County and the people she will work with at the nonprofit all are very much aware of the fact that in order to avoid Ethics Code problems, she must keep those roles exceedingly separate.

Because of the potential for such misimpressions, the requestor must remain vigilant in her awareness of actual or potential conflict and must follow the processes set

forth in the Ethics Code, and outlined in this Commission's prior advisory opinions, with respect to recusal from any issues regarding the nonprofit and/or the interests of the nonprofit which come before the County for consideration or action. Toward that end, the requestor must inform County departments, boards, and commissions of her involvement with the nonprofit. In addition, the requestor must inform the nonprofit that, in the event that the requestor is asked by the nonprofit to engage in any activity or issue that involves County government, she must recuse from any participation in such activity or issue.

The Commission commends the requestor's desire and willingness to serve her community in this manner. The Commission further commends the requestor for recognizing the need to bring this matter before the Commission in the form of a request for an advisory opinion prior to accepting the board position.

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. The requestor must refrain from involvement in the collection of fees for events held by nonprofits with which the requestor is affiliated.

BY AND FOR THE NEW CASTLE COUNTY ETHICS COMMISSION

ON THIS 14TH DAY OF MAY 2025

Robert Hicks, Chairperson
New Castle County Ethics Commission