



## **ADVISORY OPINION 26-03**

Date: March 11, 2026

Decision by Commissioners:

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

### **Question**

Whether the County Office of Emergency Management (“OEM”) may accept a gift of a water and ice rescue device from a nonprofit organization when the County is also going to purchase several of those devices from a vendor?

### **Conclusion**

A gift to the people of New Castle County may be accepted by the County so long as acceptance of such a gift does not create an appearance of impropriety. The fact that the County is going to also purchase the same item from a vendor in addition to accepting the gift from a nonprofit organization does not change that outcome per the Code. All gifts must be recorded in a publicly available gift log.

### **Facts**

A member of the OEM (“requester”) contacted the Ethics Commission for an Advisory Opinion to find out whether it would violate the Ethics Code if the County accepted a gift from Scarlett’s Foundation, a nonprofit organization, of an ARM-LOC water and ice rescue device. Recently members of OEM attended a demonstration and training held by a vendor of an ARM-LOC water and ice rescue device. Such equipment is designed to rapidly assist people in distress in water or ice rescue situations. The device hastens response efforts because it works much better than other ‘throw bag’ devices currently used by OEM. While OEM personnel were attending the training on this equipment, they were offered the donation of one of the devices by Scarlett’s Foundation, a nonprofit organization, at no cost to the County. Scarlett’s Foundation has been donating one unit of this device to participating governmental agencies. Each device costs almost \$500.00. The County plans on purchasing two more of the same device from the vendor, which is a separate entity from Scarlett’s Foundation, through the County’s procurement processes. Neither the offer from Scarlett’s Foundation nor the County’s plan to purchase units from a vendor are contingent upon the other.

**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.

*New Castle County Code* Section 2.03.104.I lists the kinds of gifts which may be acceptable under the Ethics Code. More specifically, Section 2.03.104.I.2 of the County Code states:

Gifts made to the people of New Castle County may be accepted by a representative or agent of County Government as long as the gift does not create an appearance of impropriety. Such a gift shall not become the property of or be attributed to the representative or agent. The gift shall remain in locations controlled by New Castle County. Any such gift shall be promptly recorded in a public gift log.

---

<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.”

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 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 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

---

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

<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.

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 22-01, the County was asked by the police department whether it could accept a grant for a police canine if the grantor required the placement of language related to its organization on the canine unit patrol vehicle. The Commission concluded that in 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, 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.

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... .

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.

### **Analysis**

Each time the Ethics Commission is asked to issue an Advisory Opinion, it must review the matter by evaluating the facts presented in light of the applicable laws and prior Commission opinions and orders. This particular matter requires the examination of the laws which regulate gifts, and the acceptance of gifts by County officials and employees is generally 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.

With respect to the requester's question about whether the County may accept the gift of a rescue device from a nonprofit organization, it turns out that the Ethics Code specifically allows for the acceptance of gifts by a County government representative on behalf of the public.<sup>4</sup> By accepting this gift from the nonprofit organization, the County clearly benefits. The County is planning to purchase two of the devices in question. The County did not ask the nonprofit to donate the device. The market value of the donation, while substantial, is not at a level which any reasonable person would expect it to influence the conduct of County officials or employees. The nonprofit is not regulated by the County and neither the County nor the requester has a financial interest in the nonprofit organization. Thus, 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>5</sup> This proposed gift could benefit any person assisted by OEM personnel in a water or ice rescue. On balance, the Commission believes the benefits to all concerned outweigh the potential that the County will create an appearance of impropriety by accepting the donation. The Commission thanks the Requester for consulting with the Commission on this question.

### **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. There are no factors present which demonstrate any conflict of interest 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. One of those factors is that the gift must be recorded in a publicly available gift log. For this Opinion, the Commission has relied upon the facts as supplied by the requester. 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.

---

<sup>4</sup> See *New Castle County Code* Section 2.03.104.1.2.

<sup>5</sup> See *New Castle County Code* Section 2.03.103.

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 11<sup>TH</sup> DAY OF MARCH 2026

---

Robert I. Hicks, Jr., Esquire  
Chair, New Castle County Ethics Commission

Decision: Unanimous