



ADVISORY OPINION 26-05

Date: September 9, 2026

Decision by Commissioners:

Allan Zaback, George Thompson, Robert Hicks, Sally Jensen, Shaun Kelly, Charles Toliver and Ryan Wilson

Question

The requester, an employee of the County police department, is the founder of a company which has created a law enforcement workforce management software platform. He has asked the Ethics Commission whether he would violate the Ethics Code if the New Castle County police department evaluated and/or purchased his company's software?

Conclusion

Yes; the requester, a County employee, will be in violation of the New Castle County Ethics Code if he contracts with the County police department to evaluate and/or purchase his company's software.

Facts

The requester, who is an employee of the New Castle County police department, contacted the Ethics Commission because he would like to avoid any Ethics Code issues as he moves forward with his side business, a software company which has created software for use by a law enforcement agency to manage its workforce. More specifically, the requester has asked whether he would violate the Ethics Code if the County police department either tested his new software for efficacy, etc., or if the County purchased his software. The requester specifically informed the Commission that his goal is not to personally profit from the use of his software by New Castle County. Rather, the requester's intent is for New Castle County to "benefit from a tool that solves a longstanding operational problem."

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 2.03.104.A (set forth below).

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.

Closely held corporation means a corporation in which the stock is held by fewer than ten (10) investors and is not publicly traded.

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 (set forth below).

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 and including any County Department.

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

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.

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.

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.

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.

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.

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.

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

1. No County employee or County official may represent or otherwise assist any private enterprise with respect to any matter before the County Department with which the employee or official is associated by employment or appointment.

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 only, deemed to impact other members of a firm, business, or other employer by which the County official is employed.

C. Restrictions on contracting with the County.

No County official or County employee his or her spouse, child, parent, step-parent or sibling of the whole or half-blood or any business with which the County official or County employee or his or her spouse, child, parent, step-parent or sibling of the whole or half-blood is associated or who has a legal or equitable ownership of more than five (5) percent (more than one (1) percent in the case of a corporation whose stock is regularly traded on an established securities market) shall enter into any contract with the County (other than an employment contract) or any subcontract with a County contractor unless such contract or subcontract was made or let after public notice and competitive bidding. Such notice and bidding requirements shall not apply to contracts not involving more than five hundred dollars (\$500.00) per year if the terms of such contract reflect arms' length negotiations, if the subcontractor is a sole source provider, or if there are exigent circumstances. There will be a rebuttable presumption of a knowing and willing violation of the section only if the contract or subcontract is awarded to a spouse or child of the County employee or official.

E. *Unauthorized disclosure of confidential information.* No person shall disclose any information required to be maintained confidential by the Commission under the provisions of this Division.

G. *Contracts voidable by court action.* In addition to any other penalty provided by law, any contract entered into with any County Department in violation of this Division shall be voidable by the County Department; provided, that in determining whether any court action should be taken to void such a contract pursuant to this Subsection, the County Department shall consider the interests of innocent third parties who may be damaged thereby. Any court action to void any transaction must be initiated within thirty (30) days after the County Department involved has, or should have, knowledge of such violation.

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.
- B. No County employee or County official shall acquire a financial interest in any private enterprise which such employee or official has reason to believe may be directly involved in a decision to be made by such official or employee in an official capacity on behalf of the County.
- C. Any County employee or County official who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, any County Department shall file with the County Human Resources Office a written statement fully disclosing the same. Such disclosure shall be confidential and the County Human Resources Office shall not release such disclosed information other than to the Commission and to the Department head of an employee, except as may be necessary for the enforcement of this Division. The filing of such disclosure statement shall be a condition of commencing and continuing employment or appointed status with the County.
- D. No County employee or County official shall use such public office to secure unwarranted privileges, private advancement or gain.
- 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

Section 2.03.103 of the New Castle County Ethics Code prohibits County officials or employees from personally gaining financially in matters involving County-related issues. And even when no direct conflict of interest (as defined by the Code) is present, Section 2.03.104 of the Ethics Code prohibits conduct on the part of County officials or employees which creates the appearance of impropriety. 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 94-06, the Ethics Commission was asked whether a County official or employee covered by the New Castle County Ethics Code may work part-time for a private business with which the County has a contractual relationship for the provision of professional services. The Commission determined that the Ethics Code bars County officials and employees’ secondary or outside employers from contracting with the County, unless the contract is subject to an open and public process. Generally, contracts for the provision of professional services are not subject to an open and public process. Therefore, if the requester were to accept outside employment with the contractor, that contractor would be barred thereafter from contracting with the County. And while the requester does not have authority to decide whether the County contracts with the contractor, he does have the authority and opportunity to influence indirectly such decisions. Therefore, the requester should not accept part-time employment with the contractor, since such outside employment would create an appearance of impropriety.

In Advisory Opinion 16-05, the Commission was asked whether a newly elected County official, who, during the timeframe between his election and his taking the oath of office had been in the process of reducing his role and ownership level in his sole member limited liability corporation, may take office while remaining the sole owner of such private enterprise without violating the Ethics Code. The Commission determined that the requester could take office without violating the Ethics Code while continuing his ownership of the company as long as the company continued to not do any business with the County; all relevant information was listed in his filed Statement of Financial Interests, if required; he recused himself to avoid all possible conflicts; and he did not use County resources for the benefit of the company.

In Advisory Opinion 05-04, the requester asked the Commission whether a business with which a County official is associated is prohibited from contracting for professional services with the County unless public notice and competitive bidding procedure is used. The Commission advised that a business which is associated with a County official is prohibited from contracting with the County for professional services unless public notice and competitive bidding procedure is used.

In Advisory Opinion 05-26, an official asked the Commission if hiring a qualified person for County employment who maintains outside employment as a real estate agent, a fundraiser, and private investigator would violate the Ethics Code. The Commission decided that the County may hire the best candidate for any position despite that person's outside employment as long as the outside employment did not create a conflict of interest or an appearance of impropriety. In this case, outside employment as a real estate agent and fundraiser did not create a conflict or improper appearance as long as the employee concealed his employment with the County and did not solicit clients of his agency when engaged in those activities. Given the particular confidential information involved in the County position, however, an appearance of impropriety would be created if the candidate were permitted to continue his employment as a private investigator.

In Advisory Opinion 06-15, a senior County manager in the Special Services department asked the Ethics Commission whether he could perform private consulting services similar to those he performed for the County for private entities located outside New Castle County which do not conduct business in the County and whether the employee may perform such consulting for a firm which is owned and operated by his spouse which is located in and conducts business in New Castle County. The Commission decided that the employee would avoid an Ethics Code violation by restricting his consulting services to entities that neither operate in New Castle County nor involve his County department in any way. Given that his spouse's business is located in and conducts business in New Castle County, if it performs services which are regulated by his County department, directly or indirectly in any way, he may not extend consulting services to or employment by that business.

In Advisory Opinion 01-08, the Commission was consulted about whether a County employee with the Department of Land Use, who has land use and Code inspection responsibilities, and who also is a volunteer director of a non-profit organization, may participate in fund-raising, public relations, and facility development on behalf of the non-profit organization? The Commission opined that it would not violate the Ethics Code for a Land Use employee with land use and code inspection responsibilities, who also is a volunteer director of a non-profit organization, to participate in fund-raising, public relations, and facility development on behalf of the non-profit organization, provided he does not seek to use his County position to influence any applications or matters that the non-profit organization has with the County; he recuses himself and abstains from participating in any matter that the non-profit organization has with the County Land Use Department that employs him; and he uses sufficient safeguards to eliminate any appearance of impropriety which might exist regarding fund-raising by the requesting party on behalf of the non-profit organization.

In Advisory Opinion 93-02, the Commission was asked whether a County employee whose job function includes deciding whether certain persons qualify for participation in a County administered program may solicit the business of those persons on behalf of his part-time employer. The Commission concluded that, no, the requester could not engage in that conduct without violating sections of the Ethics Code.

Analysis

The Commission commends the requester's desire to avoid Ethics Code issues and that he consulted with the Ethics Commission before moving forward with his project. This request involves issues which are covered in the Ethics Code by both the "conflict of interest" sections, found in Section 2.03.103, and the "appearance of impropriety" sections, found in Section 2.03.104. The Commission often receives questions about outside employment and/or entrepreneurship activities, especially in today's economy. The taxpayers (and the Ethics Code) expect that when County employees are 'on the clock' and getting paid by the County, they are concentrating on County work, not on matters separate and apart from their County employment responsibilities, like an outside job or a company they have developed. When a County employee is being paid to perform their County duties, the Ethics Code is violated when that County employee uses that County-paid time to work for themselves or another employer.

A section of the Ethics Code which applies directly to this request is Section 2.03.103.C, *Restrictions on contracting with the County*. That section very specifically prohibits any County employee, such as the requester, "who has a legal or equitable ownership of more than five (5) percent [of a company]...shall enter into any contract with the County (other than employment contract) or any subcontract with a County contractor unless such contract or subcontract was made or let after public notice and competitive

bidding... ." *New Castle County Code* Section 2.103.03.C. It is likely that the requester's software program would be classified as a professional service and the County threshold for a public bidding process for a professional services contract is \$150,000. This Code provision places conditions on the requester's potential contract with the County but does not prohibit the contract out right as it might be allowed if the contract is sent out for public bids. But even if the County were to send a potential contract between the County and the requester out for public bidding, the requester's contract would not be allowed per the Ethics Code, as explained below. Here, the public bidding process does not cure the potential Ethics Code issue.

Section 2.03.103.B of the Ethics Code covers situations where the interests of a business or a person are represented by a County official or employee in front of County decisionmakers and/or purchasing agents. It states, in pertinent part: "No County employee...may represent or otherwise assist any private enterprise with respect to any matter before the County Department with which the employee or official is associated by employment or appointment." *New Castle County Code* Section 2.103.03.B. This Code section applies squarely to the requester's situation as he is an employee of the police department, and he would like his business to contract with the police department. In this scenario, the requester would be representing or otherwise assisting his private enterprise (his software company) with respect to a contracting matter before his own County department. There is no exception in this provision of the statute for contracts which are publicly bid. For that reason, even if the potential contract were to be sent out for public bidding, the Ethics Code prohibits it because the requester, a police department employee, is not allowed to represent the interests of his company in front of County decisionmakers or purchasing agents for the police department.

Additionally, the Code says that a County employee is prohibited by the Ethics Code from using confidential information learned through their employment with the County for any purpose other than performing their County job. Section 2.03.104.E states: "No County employee...shall engage in any activity beyond the scope of such public position which might reasonably be expected to require or induce such County employee...to disclose confidential information acquired by such employee...by reason of such public position." Plenty of the information held by a police department is confidential, with respect to both citizens and employees. It is reasonably foreseeable that if the County police department were to enter into a contract with the requester to evaluate or purchase his police department employee software, the requester could be given or have access to confidential information to which he may not otherwise have had access. This would almost certainly include confidential information about his coworkers. Such conduct is prohibited by the Ethics Code.

Further, it is important for a County employee to avoid engaging in conduct which may reasonably cause an observer to question whether the employee is actually working for the County while being paid by the County or whether the employee is actually working for themselves while they are being paid by the County. Causing County residents or other County employees to question the situation in that manner may “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. Issues which come before the County and the requester’s department are dynamic and complex, and the members of the public as well as County employees are oftentimes not fully knowledgeable of the details involved in such issues. As noted above, much of the business of the police department is confidential. This presents the potential for misinterpretation even if there is no conflict of interest (as defined by the Ethics Code) on the part of the County employee. Any such potential for confusion on the part of the public must be prevented or minimized wherever possible. For that reason, the proposed contract would not be permitted under the Ethics Code.

Section 2.03.104.A.1 also prohibits the creation of an impression in the reasonable mind of a member of the public that an employee’s official action is affected by personal interests which impairs his 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 but the Ethics Code, itself, prohibits the requested action. The requestor is an employee of the very department with which he would like to contract on behalf of his own company. Placing conditions on the requester’s conduct, such as requiring recusal from any matters involving his product or insisting that the requester not profit from the contract, would not clear the Ethics Code prohibitions from the proposed conduct. And placing a condition on the County, such as requiring a public bidding process, similarly does not remove the matter from conduct prohibited by the Ethics Code. So long as the requester is an employee of the County police department, he may not enter into a contract with New Castle County police department for his law enforcement software program without violating the Ethics Code.

Finding

Under the facts presented, the requester, a County employee of the police department, may not enter into a contract with the New Castle County police department without violating the New Castle County Ethics Code to evaluate or purchase the workforce software which his company developed.

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 SEPTEMBER, 2026.

Allan Zaback, Chairperson
New Castle County Ethics Commission

Decision: Unanimous