



WAIVER 24-04
Date: December 4, 2024

Decision By:

Commissioners: Robert Hicks, Sally Jensen, Robert Ralston and Allan Zaback

Question

Whether the waiver of the two-year post-employment restriction, found in Section 2.03.103.D of the New Castle County Code, requested by a former member of the Office of Law who is now in private legal practice should be waived so that he may represent clients in proceedings before the County in matters involving the court-ordered general reassessment of properties county-wide?

Conclusion

The waiver is neither granted nor denied as the County Code section requiring a two-year post-employment restriction does not apply here, based upon the information supplied to the Commission. The appeals process of the county-wide general reassessment has not yet begun and, therefore, the requester did not work on those specific matters while he was a County employee or official.

Facts

The requester is a Delaware attorney who was a former New Castle County (the "County") employee or official. He worked primarily in the Office of Law. The requester left County employment voluntarily in July 2023, about a year and a half ago. While working for the County, the requester was the lead attorney in litigation involving the legality of the County's real property assessment practices and that litigation ultimately led to a court order which requires the County to perform general real property reassessments county-wide. After the litigation concluded, the requester was responsible for overseeing the contract bidding process for the selection of vendors to assist the County with the general reassessment of county properties. In addition, the requester represented the County Board of Assessment Review ("BOAR") and later represented the Department of Finance in assessment appeals filed by county property owners. The requester currently works for a law firm in Wilmington, Delaware. The appeal process for

the real estate general reassessments will begin in 2025 and the requester would like a waiver of the two-year post-employment prohibitions in the Code so that he may be able to represent citizens before the County who are appealing their new reassessment(s).

Code or Prior Opinion:

New Castle County Code Sections

In this case, the subject employee would be performing duties similar to those for which he had been directly and materially responsible during the course of his County employment. Section 2.03.103.D of the *New Castle County Code* prohibits a person who has served as a County employee or County official from “represent[ing] or otherwise assisting any private enterprise on any matter involving the County for a period of two (2) years after termination of employment or official status with the County, if the person gave an opinion, conducted an investigation or otherwise was directly and materially responsible for such matter in the course of official duties as a County employee or official. Nor shall any former County employee or County official disclose confidential information gained by reason of public position nor shall the person otherwise use such information for personal gain or benefit.”

Sections 2.03.105.A and B provide authority to the Commission to grant a waiver from the prohibition:

A. Notwithstanding the provisions of this Division, upon the written request of any County Department or of any individual who is or was a County employee or County official, the Commission may grant a waiver of the specific prohibitions governing post-employment restrictions if the Commission determines that the literal application of such prohibition in a particular case is not necessary to achieve the public purposes of this Division or would result in an undue hardship on any current or former employee, official or County Department. Any such waiver may be granted only by written decision of the Commission. ...Any person who acts in good faith reliance upon any such waiver decision shall not be subject to discipline or other sanction hereunder with respect to the matters covered by the waiver decision provided there was a full disclosure to the Commission of all material facts necessary for the waiver decision.

B. Any application for a waiver, any proceedings and any decision with respect thereto shall be maintained confidential by the Commission provided that:

1. Public disclosure shall be made by the Commission upon the written request of the applicant;

2. The Commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of this Division;
3. The Commission shall report to appropriate Federal and State authorities substantial evidence of any criminal violation which may come to its attention; and
4. In the event that a waiver is granted, the waiver decision and the record of all proceedings thereto shall be open to public inspection.

State Ethics Code Interpretations

County Code Section 2.03.103.D and Section 2.03.105.A and B are substantially identical to the post-employment prohibition and waiver authority granted to the Delaware Public Integrity Commission (hereinafter “PIC”) recited in the Delaware Code at Title 29, chapter 58. Because the County Ethics Code is required to be at least as strict as the State Code, interpretations by the PIC are informative. See, 29 *Del.C.* §5802(4). The PIC has discussed the post-employment provisions several times. In PIC Ethics Bulletin 007, issued May 22, 1998, that Commission described the State law and made reference to similar federal government provisions:

[L]ike other conflict of interest statutes, post-employment provisions are meant to insure public confidence in the integrity of the government. It is said public confidence in government has been weakened by a widespread conviction that government official use their office for personal gain, particularly after leaving the government. There is a sense that a “revolving door” exists between industry and the government [which] leads to a suspicion that personal profit was the motivation. There also is public concern that former employees may use information, influence, and access acquired during government service for improper and unfair advantage in later dealings with that department or agency. Reflecting that concern, post-employment laws set a “cooling off period” in certain areas which the ex-employee dealt with while working at the agency.

Similarly, the Delaware legislature sought to insure public confidence in the integrity of government. It set a two-year “cooling off period” in areas where the former employee was “directly and materially responsible,” etc. This limits the actual or perceived unfair advantage in subsequent dealings with a department or agency. ... Thus, this Commission has held that Delaware’s post-employment provision is an attempt to eliminate concerns that when a State employee moves from State employment to private employment that they do not use their former State position to get a “leg-up” on others in the

private sector who also seek to deal with the government. ... Additionally, it is to avoid the risk that after a State employee moves to the private sector that they will not exercise undue influence on their former colleagues. See 29 Del.C. §5802.

Analysis

The general reassessment process for every property in New Castle County is currently underway. Appeals of such reassessments, however, will not begin to be filed or processed by the County until the spring of 2025. While the requester was intricately involved in the litigation which resulted in the court-ordered general reassessment and while he represented the BOAR and the Department of Finance, he was not and is not responsible for any reassessment of any specific piece of real estate that is being completed or will be completed during the general reassessment. Thus, the requester did not “[give] an opinion” nor did the requester “conduct an investigation or otherwise was directly and materially responsible for such matter in the course of official duties as a County employee or official.” *New Castle County Code* Section 2.03.103.D. Being very familiar with the applicable laws and the procedural rules which apply to a County process is not equal to giving an opinion on a County landowner’s property reassessment, nor is it equivalent to being directly or materially responsible for the matter. Section 2.03.103.D does not function in this instance to prohibit the requester from representing appellants who come before the County to litigate their general reassessments for reassessments as the reassessments in question either took place or will take place after the requester was no longer a County employee or official.

Finding

The requester may proceed with the representation of county landholders in matters involving the court-ordered general reassessment of real property in matters before the County. Under the circumstances presented, *New Castle County Code* Section 2.03.103.D does not apply and, therefore, the requester is not required to observe the two-year prohibition for such reassessment matters. The Commission thanks the requester for consulting the Commission before representing clients in these matters.

In rendering this 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 4th DAY OF DECEMBER 2024.

Robert Hicks, Chairperson
New Castle County Ethics Commission

Decision: 4-0, unanimous