

BOARD OF ETHICS
WASHINGTON SUBURBAN SANITARY COMMISSION

ADVISORY OPINION # A-14-02

SUBJECT: CODE OF ETHICS § 3-2, RESTRICTIONS ON OUTSIDE EMPLOYMENT AND FINANCIAL INTERESTS

By request received February 21, 2014, an Employee of the Washington Suburban Sanitary Commission (WSSC) (Requestor) asked the Board of Ethics to issue an advisory opinion regarding the applicability of Code of Ethics § 3-2 to her outside position as an instructor for seminar programs for the Institute of Internal Auditors (IIA).

The Requestor develops and oversees WSSC's Internal Audit plan and program, evaluates and contributes to the improvement of the WSSC's risk management, control, and governance processes, and directs the Internal Audit Office (IAO) operations. The Requestor manages Internal Audit employees including supervising, selecting, training, assigning work, evaluating work, counseling and disciplining. Furthermore, the Requestor reviews and appraises the integrity, adequacy, and application of accounting, financial, information technology, and other operating controls. The Requestor assesses the reliability of data developed within WSSC, ascertains the extent that WSSC assets are accounted for and safeguarded from loss, and examines the adequacy of controls for safeguarding assets. The Requestor also evaluates sufficiency of and adherence to WSSC plans, policies, and procedures, as well as compliance with laws and regulations.

The IIA is a professional association for the Internal Audit profession that advocates for and promotes the Internal Audit profession; provides educational and development opportunities, standards and other professional practice guidance as well as educational certifications for Internal Audit professionals; and provides networking opportunities. Currently, the WSSC pays for membership for all Internal Audit staff members, excluding the Ethics Office staff. WSSC has also expended monies to the IIA for purchase of certification self-study materials, conference attendance, training, books and other IIA resources.

In 2010, Requestor was approved by the Institute of Internal Auditors (IIA) to serve as a facilitator for seminar programs. IIA membership is a requirement to participate as a facilitator. Prior to approval, Requestor successfully completed the IIA Instructor Development Course. Requestor has since taught courses on behalf of the IIA, both online and in-person. Although Requestor does not receive a salary or other monetary payment for teaching/facilitating for IIA, Requestor does receive instructor credits that can be used in lieu of tuition to attend seminar courses or conferences as well as reimbursement for travel expenses that Requestor may incur when teaching. Additionally, the instructor credits received by Requestor may either be used by Requestor or transferred to other members of the Internal Audit Office staff. To date, none of the credits have been used by Requestor or the Internal Audit staff as payment to the IIA; however, WSSC has expended monies to the IIA as noted above. Requestor's services as an IIA instructor are ongoing, not just a one-time occurrence.

Based on the fact that Requestor receives compensation in the form of credits for the IIA classes that she facilitates, the IIA is Requestor's "employer" and the relationship is one of "employment." The Code defines "employer" as "any person who pays or agrees to pay compensation for services rendered." The Code further defines "compensation" as "any money or thing of value, regardless of form, including the sale or delivery of tangible property, that an employer pays or agrees to pay for services rendered."

Section 3-2(a) of the Code generally restricts an employee from engaging in outside employment "if the hours of such employment conflict with the employee's normal work shift at WSSC or where the outside employment is of such a nature which does or may create a conflict of interest or the appearance of a conflict of interest." As an initial matter, the Code prohibits Requestor from teaching/facilitating for compensation for the IIA during the hours that Requestor is working for WSSC. If Requestor facilitates a course during the day for IIA compensation, which requires both time and commitment, Requestor cannot also attend to her WSSC responsibilities during the same time period.¹ The IIA's Instructor Handbook notes that while they understand that the "position as a volunteer leader with the IIA is a secondary job for you, [the IIA] needs to be able to count on you to assist in the delivery of this important IIA program."

Along those same lines, Code § 3-4(c) prohibits Requestor from utilizing a WSSC facility, property or work time for personal use. In that the Board has determined that teaching for the IIA in exchange for credits constitutes "employment," the Code prohibits Requestor from utilizing WSSC equipment or property for the purpose of performing her work for IIA. In addition, Code § 3-4(a) states that an "employee must not use the prestige of office for private gain or the gain or another, or create the appearance that the employee is utilizing the prestige of office for private gain or the gain of another." Based on Requestor's employment as an Instructor, this Section prohibits Requestor from not only teaching for the IIA but also from referring other WSSC employees or contractors to the IIA for membership, to take courses, obtain certifications, purchase materials, attend conferences or seminars, etc. while acting in Requestor's official WSSC capacity.

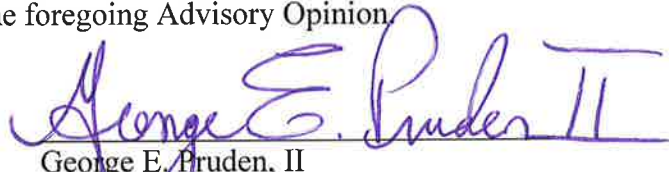
As to whether the employment relationship with the IIA creates a "conflict of interest" under the general language of Code § 3-2(a), the Board finds that it does. Serving as an instructor for the IIA for compensation (credits) constitutes a conflict of interest. Part of Requestor's authority and duties for WSSC, as set forth above, includes the approval of Employees' requests for IIA membership, educational opportunities and the purchase of IIA resources. All of these items are provided at a cost to WSSC. Considering the specific role and duties that Requestor has at WSSC, employment with the IIA raises a question as to whether Requestor can perform necessary duties for WSSC impartially and without improper influence.

¹ The current requirements for all instructors is the facilitation of at least three (3) seminars in a two (2) year period that amounts to a commitment of at least ten (10) days per year; the advance review of all course materials and completion of all exercises; regular visits to and review of the Volunteer Instructor Webpage, which is restricted to instructors only; the instructor's presence at all assigned courses, whether online or in-person; mandatory attendance at pre-seminar meetings; early arrivals to obtain and set-up presentation equipment as well as breakdown and return of any equipment; and completion of post-instruction paperwork.

Generally, Code § 1-2(a) reminds us that WSSC business “must be conducted in such an impartial manner that all persons understand that a WSSC Commissioner or employee cannot be improperly influenced. WSSC Commissioners and employees must avoid all situations where bias or the opportunity for personal gain could influence their decisions.

In conclusion, the Code generally prohibits Requestor from engaging in outside employment that may cause a conflict of interest or the appearance of a conflict of interest with Requestor’s WSSC employment. Based on the facts presented, the Board holds that Code § 3-2(a), § 3-4(a) and § 3-4(c) prohibit Requestor from working for the IIA for compensation as defined by the Code. Even if Requestor were to use vacation time and her personal resources including her personal computer and conducting the online courses off WSSC premises, the nature of Requestor’s employment and the acceptance of compensation still create conflicts of interest pursuant to Code § 3-2(a) and § 3-4(a). Requestor is reminded to include any outside positions such as the IIA Instructor position as employment on the financial disclosure statement. Should circumstances change or additional concerns arise, Requestor must seek further guidance from the Board.

On motion by Robert J. Moore, seconded by Dr. Steven Hausman, the Board agreed at its meeting held on May 8, 2014 to adopt the foregoing Advisory Opinion.


George E. Pruden, II
Chair

6/9/14
Date