

BOARD OF ETHICS
WASHINGTON SUBURBAN SANITARY COMMISSION

ADVISORY OPINION # A-17-01¹

**SUBJECT: SECONDARY EMPLOYMENT BY A COMPANY THAT IS NOT CURRENTLY DOING
BUSINESS WITH WSSC**

By request dated January 5, 2017, a Washington Suburban Sanitary Commission (“WSSC”) employee (“Requestor”) has asked the Board for a determination² as to whether the employee may obtain secondary employment as a consultant with a company not currently doing business with WSSC, but provides construction services to various water and sewer companies.

Requestor works as a Group Leader with the Engineering and Construction (“E&C”) team. This team is responsible for providing engineering and regulatory expertise to plan, design, and build necessary infrastructure within the Sanitary District. Additionally, E&C provides operational support for delivering safe water and wastewater services in a timely, cost-effective, and environmentally sound manner. This team has an integral role in all construction projects within WSSC’s jurisdiction. Requestor’s job duties include leading the effort to prevent contamination of the water delivery and sewer systems within the Sanitary District and overseeing the review of plumbing plans.

Section 3-2(a) of the Code of Ethics (“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 appearance of a conflict of interest.”

Assuming that Requestor’s secondary employment would be performed outside of the employee’s work hours at WSSC, the issue to be determined is whether Requestor’s consulting work would create either an actual or the appearance of a conflict of interest with the employee’s WSSC work.

Under the circumstances presented here, the Board advises that Requestor’s proposed consulting work with the proposed employer creates an appearance of a conflict of interest and is, therefore, prohibited by § 3-2(a) of the Code.

¹ See also Waiver Request # W-17-02.

² Requestor initially requested that the Board grant a “waiver” to allow the secondary employment, however, since the Code of Ethics does not specifically prohibit secondary employment with a company that is not currently doing business with WSSC, we determine that Requestor’s inquiry is best addressed via an Advisory Opinion.

While the proposed secondary employer is not currently registered to do business with WSSC, it is a newly-organized entity that was formed by the merger of two companies. One of the merged companies was a subcontractor on a WSSC contract with another group within the E&C team that was completed in 2011 and continues to be registered to do business with WSSC. Setting aside the fact that a component of the proposed employer is registered to do business with WSSC,³ Requestor's job level at WSSC presents an insurmountable challenge to the request even if the new company remains unregistered while Requestor is actively working with it. The fact that Requestor is a Group Leader in a team that issues the type contracts that the company pursues in its business creates the appearance that Requestor could influence the issuance of future contracts to the company from the E&C team, even if Requestor does not or cannot exert such influence. Moreover, such employment could encourage contractors and subcontractors to cycle on and off of the WSSC registration list in order to enlist the services (and good-graces) of high-level WSSC employees.

The Board recognizes Requestor's declaration that Requestor would not participate in or become involved with any WSSC-related matters involving the proposed employer. However, this is not enough to overcome the appearance that Requestor would assist the proposed employer using the information or influence gained from being a Group Leader at WSSC.

Based on the specific facts presented, Requestor's employment with the proposed employer would violate the Code.

On motion by Moore, seconded by Hausman, the Board agreed at its meeting held on March 9, 2017 to adopt the foregoing advisory opinion by a vote of 3-0.



George E. Pruden, II
Chair

4/13/17

Date

³ Sections 3-2(b)(1)(B) and (C) of the Code specifically prohibit employees from being employed by, or having a financial interest in, a business that "negotiates or has entered into a contract with WSSC" or "is a subcontractor for any business that has a contract with WSSC."