

BOARD OF ETHICS
WASHINGTON SUBURBAN SANITARY COMMISSION

ADVISORY OPINION # A-06-03

SUBJECT: CONFLICT OF INTEREST; WHETHER EMPLOYEE IN INTERGOVERNMENTAL RELATIONS OFFICE MAY HOLD ELECTED OFFICE IN PRINCE GEORGE'S COUNTY

By request dated July 14, 2006, a supervisor at the Washington Suburban Sanitary Commission (hereinafter the "Requestor") seeks an advisory opinion as to whether an employee supervised by the Requestor may hold public office in Prince George's County. The employee is currently running for both the Prince George's County Board of Education and the Prince George's County Democratic Central Committee.

The WSSC Code of Ethics does not prohibit WSSC employees from either running for or holding public office. There are certain provisions covering conflicts of interest that may be implicated, however, when a WSSC employee seeks to hold public office, specifically Section 3.2 (Outside Employment) and Section 3.4 (Misuse of Prestige of Office). Whether these provisions prevent the employee from holding one or both of the public offices sought depends, in our opinion, on an analysis of the employee's job duties and the particulars of the elected office which the employee is seeking.

Prince George's County Board of Education

The Prince George's County Board of Education (School Board) is composed of nine elected members and one student member. Maryland Annotated Code, Education Article (EA) § 3-1002. Elected members serve 4 year terms and are compensated in the amount of \$18,000 per year. EA § 3-1002, 3-1003. The Requestor states that School Board meetings take place in the evenings.

The employee running for the School Board works as a professional in the Intergovernmental Relations Office (IRO). According to the job description for the position, the duties include building "strategic relationships with government officials and community and business stakeholders" and "representing [WSSC] before municipalities, county councils, the Maryland General Assembly, and the United States Congress." Some examples of work include acting as "a liaison between [WSSC] and local government and community leaders," representing WSSC "at public meetings and community events," and developing and maintaining "relationships with key state, county and municipal elected officials."

Section 3-2 (a) of the WSSC Code of Ethics (the Code) prohibits WSSC employees from holding any outside employment that "is of such a nature which does or may create a conflict of interest or the appearance of a conflict of interest." Considering the employee's duties, the Board believes that conflicts will inevitably arise between the

employee's position at WSSC on the one hand, and his role as a member of the School Board, on the other. On behalf of WSSC, this employee is required to interact with community leaders and elected officials in Prince George's County to advocate on behalf of WSSC. If elected to the School Board, we must assume that this individual will be known as a member of the School Board within the Prince George's County community and by other appointed and elected officials in the County. Given this employee's job duties, and specifically the duty to advocate on behalf of WSSC before elected officials and community leaders in Prince George's County, we believe that there is an inherent conflict of interest in holding this elected position in Prince George's County while also serving as an advocate on behalf of WSSC.¹ We emphasize that it is the employee's specific job duties which have led us to this conclusion. Given the particulars of the two positions, the avoidance of conflicts may be beyond the control of the employee. We therefore advise that Section 3-2(a) of the Code prohibits this employee, if elected, from serving on the Prince George's County Board of Education while also holding his current position at WSSC.

Prince George's County Democratic Central Committee

According to the Maryland Democratic Party By-Laws, members of the local Democratic Central Committees "shall represent the Maryland Democratic Party within their respective political subdivisions..." and "shall promote the interest of the Democratic Party and its candidates over those of the opposing political parties and candidates. The local central committees have the power to fill certain vacant elective offices. See Maryland Constitution, Article III, Section 13. The term for members is four years. Central Committee Members are not compensated.

The outside employment prohibitions set forth in Code § 3-2 do not apply with respect to the employee's potential election to the Central Committee. The Code specifically defines "employment" as "engaging in an activity for compensation." Nonetheless, Section 1-2 of the Code is applicable here.

Section 1-2(a) of the Code, in pertinent part, provides that "[t]he Commissioners and employees of the WSSC are responsible to the ratepayers of the Sanitary District and not to any favored segment or group." Section 1-2(b) provides that the "standards of the Code of Ethics are intended to require Commissioners and employees to avoid activities which might result in the use and/or the appearance of use of their public employment for private gain or for providing favored treatment to any person, group, or organization and to maintain the highest level of public confidence in the integrity of WSSC."

Considering the above Code language, we have concerns regarding the Democratic Central Committee position that are similar to those we expressed above with reference to the School Board position. Again, this employee's job duties will require the

¹ We note that EA § 3-1002(b)(4) prohibits a School Board member from holding another office of profit in the "county government." While WSSC is not considered part of the "county government", we recognize that the State legislature, in adopting this section, may have shared some of the concerns that we have with regards to holding these two positions.

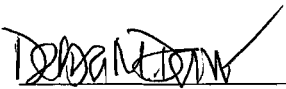
employee to represent the best interests of WSSC before the elected officials from Prince George's County. Membership on the Democratic Central Committee, on the other hand, requires the individual to promote the interests of the Democratic party and its candidates. This individual will be known as an elected member of the Central Committee while he is out in the community and before the Maryland legislature advocating on behalf of WSSC. Again, considering this employee's specific job duties, the task of avoiding conflicts under these circumstances may be impossible. At the very least, the dual roles create an improper "appearance" issue. We therefore advise that Code § 1-2 prohibits this employee, if elected, from serving on to the Prince George's County Democratic Central Committee while also holding the current position at WSSC.

Comments Regarding § 3-4 of the Code of Ethics

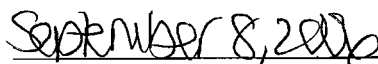
While it is not necessary to address Code § 3-4 in light of the advice given above, it is appropriate here to comment on this section, which prohibits an employee from "intentionally using the prestige of office for private gain or the gain of another." Whenever an employee runs for an elected position, or holds an elected position for which he or she is seeking re-election, this section could arise with regard to campaign activities, and particularly to fundraising. In an advisory opinion issued by the State Ethics Commission on the portion of the Public Ethics Law that is comparable to Code § 3-4, the Commission advised a Maryland State employee "of the need to avoid circumstances where a person's position may figure in private campaigning, or where information (such as mailing lists) available in a State position is used as a part of a campaign plan." See State Ethics Commission, Advisory Opinions, COMAR 00-02 at p.2 (2006). In addition, the Commission recognized that in the past, it had "consistently advised" employees running for office "to take care in campaign activities about soliciting campaign funds or assistance from individuals who are subject to the agency's authority or that are vendors or likely vendors to the individual's agency employer." *Id.*

While we have no information regarding fundraising activities for the employee at issue in this opinion, we mention this section to remind any WSSC employee running for elected office to be mindful to avoid the prohibitions set forth in Code § 3-4 when conducting campaign and fundraising activities. Moreover, employees should be particularly careful when soliciting funds from a base where the individuals may be WSSC customers and/or are subject to WSSC's regulatory authority.

On Motion by Charles Kuderna, seconded by Sharon Constantine, the Board agreed at its meeting held on September 8, 2006 to adopt the foregoing advisory opinion.



Debra M. Davis, Chair



Date

