

BOARD OF ETHICS

WASHINGTON SUBURBAN SANITARY COMMISSION

ADVISORY OPINION # A-19-01

SUBJECT: CODE OF ETHICS § 1.70.170
RESTRICTIONS ON PARTICIPATION OF EMPLOYEES

By request dated May 28, 2019, a Washington Suburban Sanitary Commission (“WSSC”) employee (“Requestor”) has asked the Board for a determination as to whether the employee is restricted from participating in certain WSSC matters based on certain financial holdings.

Prior to joining WSSC, the employee worked for a consulting firm that does business with WSSC. While employed with the company, the employee participated in its Employee Stock Option Program (ESOP). Part of the employee’s duties since joining WSSC involve managing contracts that have been awarded to company.

Code of Ethics Ch. 1.70.170(a) prohibits an employee from participating in any WSSC matter if s/he has an interest in the matter or if a party to the matter is “a business entity in which the employee has a direct financial interest...” (Ch. 1.70.170(a)(2)). Code of Ethics Ch.1.70.030(j) defines “Financial interest” as:

- (1) Ownership of an interest as the result of which the owner has received within the past three years, is currently receiving, or in the future is entitled to receive, more than \$1,000 per year; or
- (2) Ownership of more than three percent of a business entity by an employee, or spouse or significant other of an employee; or
- (3) Ownership of securities of any kind that represent, or are convertible into ownership of, more than three percent of a business entity by an employee, or the spouse or significant other of an employee.

Code of Ethics Ch. 1.70.030(n) generally defines “Interest” as any source of income, but states, among other things, that “[i]nterest does not include:

- (5) An interest in a deferred compensation plan that:
 - (i) Has more than 25 participants; and
 - (ii) The Internal Revenue Service has determined qualifies as a trust under Sections 401, 457, and 501 of the Internal Revenue Code.

The Board reviewed information about the employee’s holdings and the rules of the ESOP to determine whether either definition applied. According the information obtained

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regarding the ESOP, the Requestor's former employer restricts access to the ESOP once an employee leaves the company. The former employee cannot continue to contribute to the ESOP and must wait five years after departure to receive a lump sum payment of the value of holdings. Based on the above information, the Requestor's holdings do not meet the criteria to be considered a "Financial interest" because the holdings are significantly less than three percent of the company and the payout occurs once.

The Code of Ethics also requires employees to recuse themselves from participating in matters in which they have an "Interest". After reviewing information on the plan, the ESOP the Requestor participated in appears to meet the criteria for a trust under Section 401 of the Internal Revenue Code. Accordingly, it qualifies under the exclusion listed in Ch. 1.70.030(n)(5).

Based on the facts presented, the Board determines that the Code of Ethics does not prohibit Requestor from participating in WSSC matters involving the former employer. The Board commends Requestor for seeking the Board's advice in this matter. This opinion applies to the specific facts presented herein. Should circumstances change or additional concerns arise, Requestor should seek further guidance from the Board.

On motion of Member Hausman, seconded by Member Hysen, the Board agreed by a vote of 3-0 at its meeting held on **February 13, 2020**, to adopt the foregoing advisory opinion.