

BOARD OF ETHICS
WASHINGTON SUBURBAN SANITARY COMMISSION

ADVISORY OPINION 15-03

SUBJECT: CODE OF ETHICS § 3-3, POST- EMPLOYMENT RESTRICTIONS

By request dated November 5, 2015, a current WSSC employee (Requestor) who works as a Construction Manager in the Systems Inspection Group, Engineering Team, has asked the Board of Ethics for an Advisory Opinion regarding Code of Ethics restrictions related to job opportunities with companies that serve as sub-contractors on WSSC contracts.

By way of background, Requestor's job duties as a Construction Manager include overseeing the inspection of complex construction contracts related to new and existing water and sewer infrastructure. To that end, Requestor manages staff including contract managers, contract inspectors, and additional support staff. Requestor oversees the management of all construction contracts assigned to one of four WSSC "depots" which are organized by geographical area.

Requestor is considering job opportunities with sub-contractors who do work within Requestor's depot, as well as with sub-contractors who work on contracts managed by other depots. Section 3-3 of the WSSC Code of Ethics contains two main provisions applicable here. Subsection (a) provides that a former employee "may not assist or represent a party in a case, contract, or other specific matter for compensation involving WSSC if the former employee participated significantly in the matter as an employee." Subsection (b) sets forth the "12 month rule" which states that a former WSSC employee "may not act as an agent or representative of any person or entity in a business transaction with WSSC within 12 months of their separation from WSSC."

In the request for Advisory Opinion, Requestor presents several statements of the type of work that Requestor expects to perform for a WSSC sub-contractor. First, Requestor contemplates performing "high level management work" or marketing/promotion work for matters "not associated with the WSSC Sanitary District." This type of work is not prohibited by subsections (a) or (b) of Section 3-3, as set forth above, because it does not involve any WSSC matter or any business transaction with WSSC.

Second, Requestor contemplates that he may be asked to serve as a consultant on issues pertaining to WSSC contracts that are managed from other depots (other than the one in which Requestor currently works). Requestor does not manage contracts from other depots and therefore would not have "participated significantly" on those contracts. Therefore, subsection (a) of section 3-3(a) would not prohibit Requestor from performing this work after the "12 month" requirement set forth in subsection (b) expires. Although Requestor would be working for a subcontractor and WSSC does not have direct contractual privity with the sub-contractor, it is the Board's opinion that performing work as an "agent or representative" of that subcontractor on WSSC contracts does indeed fall within the "12 month" prohibition set forth in Code Section

3-3(b). Specifically, WSSC inspects the work that is completed by the sub-contractor and compensates the sub-contractor (albeit through the Prime Contractor). As such, acting as an agent or representative of the subcontractor on WSSC contracts on work for which the subcontractor expects to be paid does indeed constitute a "business transaction" as that phrase is used in Section 3-3 (b).

In conclusion, based on the facts presented, the Board advises that the Section 3-3 (b) of the Code prohibits the Requestor from acting as an "agent or representative" of a subcontractor on WSSC matters for a period of 12 months from the date of Requestor's departure from WSSC. The Board encourages Requestor to fully educate himself about all post-employment restrictions as prescribed by the WSSC Code of Ethics. Should circumstances change or additional concerns arise, Requestor should seek further guidance from the Board.

The Board agreed at its meeting held on December 10, 2015 to adopt the foregoing Advisory Opinion.


George E. Pruden II, Chair

12/10/15
Date