

BOARD OF ETHICS  
WASHINGTON SUBURBAN SANITARY COMMISSION

**ADVISORY OPINION NO. A-13-01 (formerly WAIVER REQUEST NO. 13-02)**

**SUBJECT: CODE OF ETHICS § 3-3, EMPLOYMENT RESTRICTION – FORMER COMMISSIONERS AND EMPLOYEES**

By request dated March 11, 2013, a former WSSC employee (Requestor) has asked the Board of Ethics to issue a Waiver of the Code of Ethics § 3-3(b), prohibiting the former Associate Project Manager in the Project Delivery Group, Engineering and Construction Team, from acting “as an agent or representative” for an existing WSSC contractor for 12 months of separation. Requestor separated from WSSC employment on September 6, 2012.

As a former Associate Project Manager, Requestor assisted a Senior Project Manager with leading cross functional teams managing planning, design and construction for treatment plants, pumping stations and other facilities. Requestor consulted and worked with team members from other internal organizations in the administration of consultants, Architect/Engineer (“A/E”) and construction contracts and their associated procurement mechanisms. Furthermore, Requestor reviewed technical, management, and budgetary plans and schedules for projects; reviewed financial implications and ensured project compliance through reporting. Requestor provided that a significant amount of his projects involved the following contracts: Contract No. BF3614J03 - Potomac WFP Pump Upgrade; Contract No. BF5157A10 - Potomac WFP Outdoor Substation No.2 Replacement; Contract No. BF5339A12 - Potomac WFP Pre-Filter Chlorine & Air Scour; Contract No. AM5140A10 - Anacostia Jet Truck Garage; Contract No. CP6009A11 - Fort Washington WWPS Improvements; and Contract No. BE4473A06 - Olney Standpipe Replacement.

Requestor has been offered an engineering position with a WSSC contractor to work on a contract that is managed by the WSSC Project Delivery Group. The position requires interaction as the firm’s agent or representative with WSSC. Requestor seeks a Waiver based on the reasoning that he “never worked on this contract in any capacity whatsoever.” Requestor notes that he “never worked on any projects in any capacity” with the particular WSSC facility that is the subject of the contract and he “never managed any contracts where the subject entity was a prime or sub-consultant.” He believes that since he has “no intimate knowledge of the project,” he does not possess any “unfair advantages.”

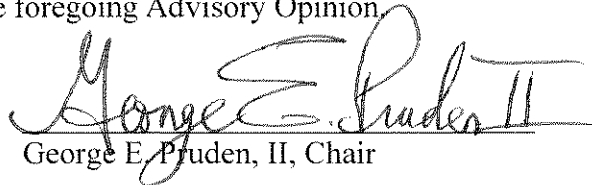
Code of Ethics Section 3-3(b) prohibits a former WSSC employee from acting “as an agent or representative of any person or entity in a business transaction with WSSC within 12 months or their separation from WSSC.” While Section 3-3(b) does not prohibit former employees from generally working on the WSSC contracts for the initial 12 months of their employment separation from WSSC, acting as an agent or representative is clearly prohibited by the Code.

The standards that the Board must follow for consideration of a Waiver request are set forth in Section 2-3(a)-(b). Section 2-3(a) enforces the standard that the best interests of WSSC should always outweigh any potential conflict of interest. Under the circumstances presented here, the Board denies the Waiver request. Pursuant to Section 2-3(d), if “a request for a waiver is denied, the Board may publish its response as an advisory opinion under Section 2-2.”

The application of Code of Ethics § 3-3(b) does not distinguish between those former employees who worked on or had intimate knowledge of a specific WSSC contract or matter from those who did not work or possess such knowledge. Requestor shall not serve as an agent or representative for a WSSC contractor within 12 months of Requestor’s employment separation from WSSC. Additionally, Code of Ethics § 3-3(a) also addresses post-employment restrictions. This section, unlike § 3-3(b), has no time restrictions. It prohibits former WSSC employees from assisting or representing “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.” (Emphasis added) Requestor should also keep this provision in mind. If the firm should obtain a WSSC contract that involves a matter on which he participated significantly, as that phrase is defined in the Code, then Section 3-3(a) would prohibit him from ever “assisting or representing” the firm on that WSSC project.

In conclusion, based on the facts presented, the Board holds that the Code prohibits the Requestor from accepting employment as an agent or representative with any firm that has a business transaction with WSSC within the WSSD within 12 months of his employment separation. 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.

On motion by Robert Moore, seconded by Steve Hausman, the Board agreed at its meeting held on April 11, 2013 to adopt the foregoing Advisory Opinion.

  
George E. Pruden, II, Chair

5/2/13  
Date