

BOARD OF ETHICS  
WASHINGTON SUBURBAN SANITARY COMMISSION

**WAIVER REQUEST 14-01**

SUBJECT: CODE OF ETHICS § 3-1(a), RESTRICTION ON PARTICIPATION OF EMPLOYEES

By request received June 9, 2014, a WSSC employee (Requestor) has asked the Board to waive its Advisory Opinion 14-01<sup>1</sup>, which addressed Requestor's participation on WSSC matters involving a firm that employs Requestor's brother. Requestor is a Development Unit Coordinator and a WSSC Principal Engineer for the Development Services Group (DSG). Requestor's brother, a qualifying relative pursuant to the Code of Ethics (Code) § 1-3(s), is also a Principal Engineer and serves as an officer, Vice President, and General Manager of an engineering firm that prepares and submits water and sewer designs for review, approval and permitting to the DSG on behalf of private developers in the WSSC District (WSSD).

The Board in its Advisory Opinion 14-01 concluded that Code §§ 3-1(a) and 3-1(a)(2) prohibited Requestor from participating in any matters involving the firm that employs Requestor's brother. The Board also advised the Requestor to recuse himself from participation in any WSSC matter involving the firm and recommended that a detailed recusal letter be executed by Requestor and submitted to Requestor's Manager.

As the basis for Requestor's Waiver Request, the Requestor states his brother "has very little involvement in the plan production for projects at the firm. The primary point of contact...is through that firms [sic] Project Managers, Project Engineers and Designers and WSSC's point of contact is through the WSSC DSG Project Manager and/or staff." The requestor further notes that although the percentage of projects with his brother's firm is small, "this can vary and if...not allowed to perform my official duties without restriction, it may adversely affect the level of WSSC service that we provide to our customers."

Section 3-1(a) of the Code generally restricts an employee from participating "in any matter, except to exercise a purely administrative or ministerial duty which does not affect the disposition or decision concerning that matter, if the employee or a qualifying relative has an interest in the matter, or the employee creates the appearance that he or she has an interest in the matter." Code § 3-1(a)(2) specifically restricts an employee from participating in any WSSC matter if a "business entity with which either the employee or a qualifying relative (if known to the employee) is an officer, director, trustee, or employee."

Since the Requestor oversees the Development Unit's functions, and as a result, oversees the review and approval of water/sewer mainline extensions and site utility project plans (onsite) as well as hydraulic planning of new water and sewer extensions, Requestor's job duties go beyond mere "administrative" or "ministerial" duties, and therefore, constitute participation as defined in the Code. Requestor's brother is not only an employee of the business entity, he is also an officer and director. Therefore, Requestor is in a position to review and approve (or reject) water and sewer plans submitted by his brother's firm that are signed by the firm's

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<sup>1</sup> As a matter of procedure, the Board notes that § 2-3 of the Code, which addresses waiver requests, allows the Board to grant (or deny) a waiver of "the prohibitions" of the Code. While seeking a "waiver" of an advisory opinion is not technically permitted by the Code, the Board notes that in Advisory Opinion 14-01, we opined that the Code "prohibited" Requestor from participating in WSSC matters involving his brother's company. Therefore, the Board recognizes that Requestor is requesting a waiver of the "prohibitions" explained in our opinion.

employees, representatives or agents, including his brother, and those who may have a reporting relationship to his brother.

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.

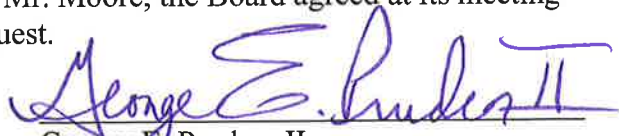
Under the circumstances presented here, the Board denies the Waiver Request. While Requestor notes that DSG staff positions and staff positions within his brother's firm would serve as primary points of contact, those same positions potentially have a reporting relationship to Requestor and his brother, respectively. The fact that the percentage of projects to DSG from his brother's firm may increase, heightens the risks of conflicts of interest occurring. Requestor implies that a recusal, prohibiting him from participating in matters involving his brother's firm, can affect the review process. However, it is the Board's understanding that any actions by the Requestor related to his brother's firm can be delegated to other personnel within DSG. With the existence of a small percentage of work performed by the firm currently, now is the time to put protocols in place to recognize and account for this conflict situation.

Requestor notes that "brothers or sisters or other WSSC staff...[may] work at companies that do business with WSSC and no restrictions are placed upon those WSSC individuals." The Board is not aware of these other circumstances but would be eager to address them when they are brought to our attention. The Board encourages the requestor to provide any information concerning such relationships that may present potential conflicts of interest to the Ethics Officer for further review.

Requestor is reminded that if the Recusal has not been composed and executed as of yet, it should be done immediately and shared with not only Requestor's Manager but all affected personnel. It should be a memorandum executed under the penalty of perjury by the Requestor and include the following information: name; position, team and group/unit; description of the nature of the conflict; and a statement that Requestor is recusing himself from participation. A copy of the executed Recusal should also be sent to the Board of Ethics. Please be mindful that a Recusal means that you are not participating on behalf of WSSC in any way before your brother's firm, including meetings, deliberations, approving actions, making recommendations, giving advice, considering findings, or in any other way assuming responsibility for or participating in any aspect of the work or decision-making relating to your brother's firm. The Recusal will protect not only WSSC but you too from potential claims of "use and/or the appearance of use of...[your] public employment for private gain or for providing favored treatment to any person, group or organization." *See Code § 1-2(b).*

Should circumstances change or additional concerns arise, Requestor must seek further guidance from the Board.

On motion by Dr. Hausman, seconded by Mr. Moore, the Board agreed at its meeting held on August 14, 2014 to deny the Waiver Request.

  
George E. Pruden, II  
Chair

8/25/14  
Date \_\_\_\_\_