

BOARD OF ETHICS
WASHINGTON SUBURBAN SANITARY COMMISSION

ADVISORY OPINION # A-12-01

SUBJECT: CODE OF ETHICS § 3-2 RESTRICTIONS ON OTHER EMPLOYMENT AND FINANCIAL INTERESTS

By request dated March 2, 2012, a WSSC employee (Requestor) has asked the Board of Ethics to issue an advisory opinion as to whether the WSSC Code of Ethics (Code) prohibits the employee, an Environmental Analyst for WSSC, from working as an independent licensed Tree Expert in the State of Maryland, performing arborist and tree services for a tree care subcontractor to a WSSC contractor within the Washington Suburban Sanitary District (WSSD).

As a WSSC Environmental Analyst, Requestor reviews trees and plans, performs erosion and sediment control, performs tree inspections, enforces erosion and sediment control regulations and issues roadside tree permits within the WSSD. Requestor also serves as an independent contractor to a tree care company. The tree care company is a subcontractor to a company who has a contract with WSSC. The subcontractor's primary work is in Montgomery and Prince George's Counties. Requestor's position at WSSC requires Roadside Tree Care Expert certification through the Maryland Department of Natural Resources (DNR). Through further information obtained, Requestor also maintains a Tree Expert license, a DNR requirement for contractors. DNR's website lists Requestor as a Licensed Tree Expert. Requestor would like to continue performing arborist and tree care services within the WSSD as an independent contractor.

Section 3-2(a) of the Code generally restricts an employee from engaging in outside employment "if the hours of such employment conflict with the employee's normal work shift at WSSC or where the outside employment is of such a nature which does or may create a conflict of interest or the appearance of a conflict of interest." Assuming that Requestor intends to seek outside work that does not conflict with his normal work hours at WSSC, the issue to be determined is whether Requestor's work as an independent Tree Expert, performing work within the WSSD, would create either a conflict of interest or the appearance of a conflict of interest with the employee's position and work at WSSC.

Under the circumstances presented here, the Board advises that the Code prohibits Requestor from performing non-WSSC arborist and tree care work for businesses, as defined by the Code, that also do business, whether directly or indirectly with WSSC. Specifically, Section 3-2(b)(1) states:

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Unless the Board grants a waiver under Section 2-3, or as permitted by an advisory opinion under Section 2-2, an employee must not:

- (1) be employed by, or have a financial interest in any business that:
- (A) is regulated by WSSC;
 - (B) negotiates or has entered into a contract with WSSC; or
 - (C) is a subcontractor for any business that has a contract with WSSC.

Requestor's position as Environmental Analyst requires significant oversight and contact with businesses regarding WSSC related matters. Permitting Requestor to potentially perform non-WSSC related work for businesses who may have contracts with WSSC or who serve as subcontractors to WSSC contractors, creates the appearance of a conflict of interest. Specifically, it would raise questions of how Requestor obtained such business, how Requestor is able to separate his official WSSC duties from his duties as an independent licensed Tree Expert and whether Requestor gave special treatment to the business in connection with the WSSC contracting or subcontracting matter.

In conclusion, the Code prohibits Requestor from engaging in outside employment, serving as an independent Tree Expert for a contractor or a subcontractor to a business that has a contract with WSSC. The prohibition extends to all outside employment opportunities for arborist and tree services projects within the WSSD. While there is no prohibition on Requestor obtaining and maintaining a separate DNR Tree Expert License, Requestor shall not affiliate that license or application for that license with WSSC in any way. Requestor must remain mindful that WSSC business be conducted at all times in an impartial manner to avoid any potential conflict of interest or appearance of conflict of interest.

On Motion by Steve Hausman, seconded by George Pruden, the Board agreed at its meeting held on May 10, 2012 to adopt the foregoing advisory opinion.



Robert Moore, Chair

10 May 2012
Date