

BOARD OF ETHICS
WASHINGTON SUBURBAN SANITARY COMMISSION

ADVISORY OPINION # A-13-02

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

By initial Waiver Request No. 13-05 dated November 1, 2013 and supplemented as an Advisory Opinion Request dated December 12, 2013, a WSSC Employee (Requestor) has asked the Board of Ethics (Board) to issue an advisory opinion as to whether the WSSC Code of Ethics (Code) prohibits the Requestor, a Photographer for WSSC, from owning an outside photography business within the Washington Suburban Sanitary District (WSSD).

As a Photographer for WSSC, the Requestor serves as the staff photographer for all departments within the WSSC. The Requestor takes photographs or videos for WSSC-related functions, including but not limited to special events, award ceremonies, retirement celebrations and media events; photographs and videotapes (when possible) all stages of construction to document work; works with the WSSC Claims Unit to photograph and videotape (when possible) property damage; and serves in an on-call capacity for Commission-related emergencies or incidents that require immediate documentation including taking photographs and videotaping incident scenes. Additional duties include developing, printing, editing, cataloging and framing photographs, as well as serving as videographer when other staff need assistance with WSSC-related video production.

Requestor is the current proprietor of a photography business that has operated both inside and outside of the WSSD for more than twenty years. His client base is diverse including individuals, companies and local government entities. The types of events photographed include social, educational, sports and organizational events.

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's work with his outside business does not conflict with his normal and on-call work hours at WSSC, the issue to be determined is whether Requestor's outside photography work within the WSSD creates either a conflict of interest or the appearance of a conflict of interest with the employee's position and work at WSSC.

Specifically, Section 3-2(b)(1) and (2) state:

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.
- (2) hold any other employment relationship that would impair the impartiality and independence of judgment of the employee

Based on the above provisions, the Board advises that the Code does not *per se* prohibit Requestor from owning a photography business that operates within the WSSD. Requestor's business is currently not regulated by WSSC and does not have any contracts with WSSC. As long as the outside work is done on Requestor's personal time and Requestor is mindful of what particular types of work raise a conflict of interest or an appearance of a conflict of interest, then the outside business may be permissible.

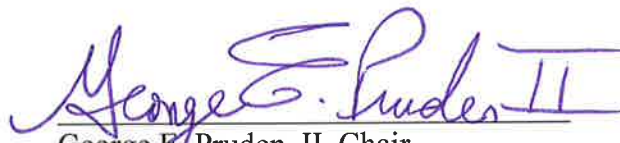
This does not mean, however, that the Board is without concerns. Without the provision of a specific set of circumstances, the Board cannot generally advise that the Code allows or disallows Requestor from performing the same or similar duties of Requestor's WSSC position for his outside business within the WSSD. Requestor's WSSC position requires significant interaction with persons and businesses regarding WSSC related matters. Permitting Requestor to potentially perform non-WSSC photography work for persons or businesses that may have some type of business arrangement with or financial interest in WSSC, may create an actual conflict of interest or create the appearance of a conflict of interest. Specifically, it would raise questions of how Requestor obtained such business, how Requestor is able to separate the official WSSC duties from the outside business duties and whether Requestor gave special treatment to the person or business in connection with their relationship with the WSSC.

In light of the guidance provided above and to avoid a potential violation of the Code, the Requestor must also remain mindful of Code § 3-4(a) and (c). Section 3-4(a) prohibits any employee from using his or her position at WSSC for private gain or for the private gain of another. It also prohibits an employee from creating the appearance that he or she is utilizing his or her WSSC position for private gain. Therefore, this Section would prohibit Requestor from referring employees or contractors to the outside business while on duty as a WSSC Photographer. Further, Code § 3-4(c) prohibits any employee from utilizing a WSSC facility, property or work time for personal use. An example of this prohibition includes providing outside business cards to potential clients while on duty as a WSSC Photographer.

In conclusion, the Code generally prohibits Requestor from engaging in outside employment that may cause a conflict or the appearance of a conflict with the Employee's WSSC employment. While there is no absolute prohibition on Requestor maintaining an outside business that is in the same or similar line of work as the Employee's WSSC employment within the WSSD, Requestor shall not affiliate those outside activities with WSSC in any way. Requestor must ensure that as officer or agent of another company within the WSSD, Requestor act and operate in compliance with the Code and any applicable laws, regulations, policies and procedures. Requestor must remain mindful at all times that WSSC business be conducted in an impartial manner to avoid any potential conflict of interest or appearance of conflict of interest.

Should circumstances change and Requestor is presented with a potential conflict of interest, Requestor should seek further guidance from the Board.

On Motion by Mr. Robert Moore, seconded by Mr. Wayne Keeler, the Board agreed at its meeting held on January 9, 2014 to adopt the foregoing advisory opinion.


George E. Pruden, II, Chair

1/9/14
Date