

BOARD OF ETHICS
WASHINGTON SUBURBAN SANITARY
COMMISSION

ADVISORY OPINION # A-04-02

SUBJECT: CONFLICT OF INTEREST: REQUEST FOR OPINION AS TO WHETHER WSSC EMPLOYEE'S APPOINTMENT TO GOVERNOR'S BAY RESTORATION FUND ADVISORY COMMITTEE INTERFERES WITH EMPLOYEE'S DUTIES REPRESENTING WSSC BEFORE THE MARYLAND GENERAL ASSEMBLY ON STATEWIDE ENVIRONMENTAL LEGISLATION

By Memorandum dated September 14, 2004 addressed to Ben Bialek, then General Counsel of the Washington Suburban Sanitary Commission (WSSC), a WSSC employee (the requestor) sought advice as to whether his appointment to the Governor's Bay Restoration Fund Advisory Committee would interfere with the requestor's duties representing WSSC in Annapolis on statewide environmental legislation.¹ On or about September 16, 2004, the General Counsel's Office forwarded the requestor's inquiry to the WSSC Board of Ethics.

The Bay Restoration Fund (the Fund) was established by the Maryland General Assembly in 2004 in part to fund upgrades to wastewater treatment plants throughout Maryland and to fund improvements to treatment facilities discharging into the Chesapeake Bay or other waters of Maryland. Maryland Code Annotated, Environmental Article (EA) § 9-1605.2 (a) (2004). Monies for the Fund are generated through fees charged to sewer system users. EA, § 9-1605.2(b). The General Assembly created a "Bay Restoration Advisory Committee" (Committee) to perform various tasks with relation to the Fund, including, among other things, identifying "additional resources for funding " and making "recommendations to improve the effectiveness of the Bay Restoration Fund in reducing nutrient loadings to the waters of the State." EA § 9-1605.2 (j). The Committee consists of 18 members, two of whom are appointed by the Governor to represent publicly owned wastewater facilities. EA § 9-1605.2(j)(2)iv. Committee members do not receive compensation for their service, however, they are entitled to reimbursement for their travel expenses.

In the Board's view, the requestor's service on the Committee does not *per se* create a conflict of interest with the requestor's job duties in representing WSSC before the General Assembly on statewide environmental legislation. Per Article 3 of the WSSC Code of Ethics, the requestor's service on the Committee is not prohibited. In addition, the General Assembly clearly contemplated participation on the Committee from employees of publicly owned wastewater agencies such as WSSC. *Id.*

¹ The requestor also sought advice regarding whether he must complete an employee exemption disclosure form. This form is one required in certain instances by the State Public Ethics Law,. Therefore, the General Counsel's Office referred the requestor, on this issue, to the State Ethics Commission.

Having determined that there is no *per se* conflict of interest, the Board recognizes that specific issues could arise during the requestor's participation on the Committee that may create a conflict or an "appearance of a conflict" which would require the requestor to recuse himself from involvement in a particular issue. The requestor has recognized this in his correspondence, and the Board encourages the requestor to seek further advice from the Board should he feel it necessary.

Finally, the Board advises that the requestor disclose his service on the Committee in Section X of his Financial Disclosure Form.

On Motion by Debra Davis, seconded by Sharon Constantine, the Board agreed at its meeting held on November 18, 2004 to adopt the foregoing advisory opinion.

/s/

Sharon M. Constantine
Chair, WSSC Board of Ethics

November 18, 2004 _____
Date