

## **SYNOPSIS OF NCC ETHICS COMMISSION ADVISORY OPINIONS**

**1991**

### **ADVISORY OPINION 91-01, April 22, 1991**

It would constitute an appearance of impropriety if a County employee accepted an honorarium for participating in a trade symposium held by a vendor from which the County employee, on the County's behalf, purchase services.

### **ADVISORY OPINION 91-02, July 30, 1991**

A developer who is rehabilitating a low-income housing project plans to apply for grants administered by the County's Department of Community Development and Housing and for variances from the County's Board of Adjustment. A County official is related to this developer in several ways: 1) one of the developer's principals is related to the County official through marriage; 2) the official has previously represented this developer in its efforts to obtain financing, not related to the County; and 3) in connections with unrelated business ventures, the official is partners with one of the principals. To avoid any potential appearance of impropriety the County official should avoid participating in any decision involving this developer or project and should follow the voting conflict section of the Ethics Code requiring disclosure and abstention if confronted with any vote involving this developer or project.

### **ADVISORY OPINION 91-02, (Revised), December 5, 1991**

The Statement of Financial Interests of a County employee who is also a County official by virtue of an appointment to the New Castle County Pension Board of Trustees constitutes a public record subject to public inspection, like the Statement of Financial Interests filed by any County official.

### **ADVISORY OPINION, 91-04, May 17, 1991**

An appearance of impropriety may arise where a New Castle County Development and Housing employee, responsible for the County's marketing of the Section 8 Existing Housing Assistance Payments Program and the resolution or problems between landlords and tenants participating in that program, owns rental property certified for this Program through the City of Wilmington. To avoid any appearance of impropriety, this County employee should disclose his participation in the Program through the City of Wilmington to his department head and recuse himself from involvement in any administration of the County's Program which would impact his property.

**ADVISORY OPINION, 91-05, June 5, 1991**

It would constitute an appearance of impropriety if a County employee engaged in a private litigation support consulting service in an area substantially similar to his employment responsibilities.

**ADVISORY OPINION, 91-06, May 7, 1991**

There is no violation of the Ethics Code where a County employee's expenses for attending a county fair convention to learn about planning and organizing county fairs is reimbursed for those expenses by the cosponsor of the New Castle County Fair out of the proceeds from that event.

**ADVISORY OPINION 91-07, (Revised) December 9, 1992**

The question is whether it would violate the Ethics Code if County officials and employees accepted gifts or invitations to social, sporting or other events generally open to the public from persons with whom the County has a relationship. The Ethics Commission will presume that gifts and invitations to a County official or employee, the value of which does not exceed \$75.00 per year per donor, will not create an appearance of impropriety. Gifts and invitations the where aggregate value exceeds \$75.00 per year per donor will have to be evaluated based upon the surrounding circumstances. All gifts and invitations, no matter the valued, must be disclosed to the official or employee's director, department head, board chairman or other superior. Each department, board or other unit of County government may adopt a more restrictive policy. All officials and employees must disclose gifts and invitations exceeding a certain value on their Statement of Financial Interests form.

**ADVISORY OPINION, 91-08, June 17, 1991**

There is no violation of the Ethics Code if a County employee's spouse bids on a contract with the County where the bid is part of an open and public process and the County employee has no involvement in the implementation or administration of the contact.

**1992**

**ADVISORY OPINION 92-01, June 12, 1992**

It would constitute an appearance of impropriety if, prior to the hearing on a requested variance, the Board of Adjustment accepted an invitation from the applicant for an onsite meeting and inspection.

**ADVISORY OPINION 92-02, June 12, 1992**

County Pride asks whether its proposed joint venture with the New Castle County Chamber of Commerce violates the Ethics Code. County Pride is not an entity subject to the Code. However, County Pride's board includes County officials and employees who are. The potential for appearance of impropriety exists whenever a County official or employee on County Pride's board is required to make a decision or take action, in his or her capacity as a County official or employee, which involves the Chamber of Commerce. The provisions of the Code must be applied as these circumstances arise.

**ADVISORY OPINION 92-03, August 17, 1992**

A County official's spouse's employer intends to submit a bid to provide materials to an organization. That organization may later be an applicant for a County grant. If the organization does apply for a County grant, the County official should abstain from participation in the award decision. Although the relationship between County official and organization is remote, abstention would avoid any appearance of impropriety, however slight, and would reflect the highest ethical standards.

**ADVISORY OPINION 92-04, September 21, 1992**

It would constitute a conflict of interest if a County employee, whose job responsibilities include awarding, implementing and administering contracts, were to award a contract to a business owned by his spouse. It would violate the contract and bid restrictions of the Ethics Code if that County employee's spouse's business were to enter into a subcontract with a general contractor in connection with its performance of a contract with the County, whose contract the County employee was associated.

**ADVISORY OPINION 92-05, September 10, 1992**

There would be an appearance of impropriety if a County Board member participated in the Board's decisions concerning its retention and compensation of professionals, when he and his employer have business relationships with some of those professionals. This County Board member may sit on the public advisory board of the County's Board consultant and attend annual meetings of that advisory board at the consultant's expense. Under these circumstances however, there would be an appearance of impropriety were this Board member to participate in decisions concerning the County Board's retention or compensation of consultants. Payment by the consultant for the County Board member's transportation, lodging and hospitality expenses incurred in attending the consultant's advisory board's annual meetings must be disclosed on the County Board member's Statement of Financial Interests form.

**ADVISORY OPINION 92-06, November 12, 1992**

It would not violate the Ethics Code if a County official or employee were related, as a cousin, to a person whom a department section under the County official or employee's supervision intended to hire on a temporary basis. However, to avoid any possible negative perception, albeit slight, the relationship between the County official or employee and the temporary hire should be disclosed to those whose approval is required for authorization of the temporary hire.

**ADVISORY OPINION 92-07, January 28, 1993**

The issue presented is: what circumstances may a County employee with County building and construction code responsibilities undertake secondary employment in the construction industry. A County inspector may never inspect construction he has done or construction done by a business with which he is associated, as this would create a conflict of interest. This ethical problem is not cured by having another County inspector inspect County construction done by his fellow inspector or by his business with which his fellow inspector is associated, since this would create an appearance of impropriety. Therefore, the following restrictions must apply to all County inspectors; A) A county inspector must limit work done as an individual to construction that would be subject to the County's inspection, either by virtue of the nature of the construction or its location outside the County's geographic jurisdiction. B) A county inspector must not be associated with a business which does any construction subject to County inspection.

**ADVISORY OPINION 92-08, December 4, 1992**

It would not violate the Ethics Code if New Castle County's Department of Community Development and Housing granted a home rehabilitation loan to a homeowner who satisfied all requirements of an established loan program but is employed by the County.

**ADVISORY OPINION 92-09, December 4, 1992**

A county employee may participate in a training session for representatives of a manufacturer of equipment where the County employee drafts plans and specifications. Since he is not involved in deciding which manufacturer the County purchases such equipment. However, the County employee's transportation, lodging and hospitality expenses incurred in attending the training session and reimbursed or paid by the manufacturer should be disclosed on the County employee's Statement of Financial Interests form.

## 1993

### **ADVISORY OPINION 93-01, March 5, 1993**

The issue presented is: under what circumstances may a County employee, with County building and construction code responsibilities, undertake secondary employment conducting various types of construction, property inspections and building plan reviews for members of the private sector. Each type of inspection and plan review activity proposed must be considered separately: A.) A County inspector may not “prereview” building plans to facilitate the building plan review process by the County, since this would create an appearance of impropriety. B.) He may review construction and building plans to assess compliance with the Americans with Disabilities Act, so long as none of the requirements of this Act are incorporated into the County building and construction codes. C.) He may inspect construction on behalf of banks, other lending institution or lenders, provided that the construction is not within the geographic district where he assigned. D.) He may inspect the condition of the residential properties, excluding new construction, separate and apart from county code compliance. E.) He may teach and lecture about the County building and construction codes but may not accept in exchange any payment or honorarium from persons who work he may inspect in his official capacity, since this could create an appearance of impropriety.

### **ADVISORY OPINION 93-02, February 5, 1993**

A County employee whose job function includes deciding whether certain persons qualify for participation in a County administered program may not solicit business of those persons on behalf of his part-time employee as this would constitute a conflict of interest.

### **ADVISORY OPINION 93-03, January 7, 1994**

If an assessor employed in the Assessment Division of the New Castle County’s Department of Finance worked at the same time in the private sector as a realtor or appraiser, would constitute an appearance of impropriety.

## 1994

### **ADVISORY OPINION 94-01, March 14, 1994**

It would not violate the Ethics Code if a County official’s adult stepchild, employed by a temporary agency, is assigned to work for a company with which the County contracted for the provision of services, where selection of the Company was not within the County official’s authority.

#### **ADVISORY OPINION 94-02, May 5, 1994**

It would not violate the Ethics Code if a County employee's duties included maintenance and drainage of County sewers, while the County employee's spouse owns a business providing the same services to private property owners – to the extent sewer maintenance and drainage is the private property owner's responsibility, rather than local government's. However, while acting in his capacity as a County employee, he must not refer a private property owner to his spouses' business or make any decision or take any action involving the adequacy or nature of work done by his spouse's business, lest he create an appearance of impropriety.

#### **ADVISORY OPINION 94-03, April 28, 1994**

A County employee may accept an honorarium from a company, which organizes educational seminars, for participating in a seminar it organized about a particular legal process private citizens may initiate before a County agency. (Advisory Opinion 91-01 distinguished.) The Ethics Code does not address use by County officials or employees of County property or time. It therefore does not require the County employee to use vacation time for time spent at a seminar.

#### **ADVISORY OPINION 94-04, August 29, 1994**

If a member of County Council were to vote on an ordinance that would affect the value of land conveyed by that Member's father, a portion of which was later reconveyed to the father's estate (where the member was the executor and beneficiary) to satisfy a debt to that estate, would create a conflict of interest. Therefore, under Section 2-30.2(f) concerning voting conflicts, the member must abstain from voting on the ordinance and, prior to the vote being taken, publicly announce and disclose the nature of his interest.

#### **ADVISORY OPINION 94-05, July 26, 1994**

A County official or employee may operate a part-time business where there is no relationship between his position with and duties on behalf of the county and the part-time business. The Ethics Commission urges any County official or employee covered by the Code to seek the Commissioner's opinion about whether any proposed part-time employment or business venture would give rise to an ethical problem. In each instance, the Commission must examine the nature of the outside employment or business and its relationship, if any, to the County official or employee's position or duties. Thus, each matter must be considered on a case-by-case basis.

#### **ADVISORY OPINION 94-06, November 4, 1994**

If a County official or employee accepted outside employment with an employer who contracts with the County for the provisions of professional services ("Contractor"),

where the awarded contracts were not subject to an open and public process (as is usually the case with professional services contracts), that Contractor would be barred thereafter from contracting with the County, under the contract and bid restrictions of the Ethics Code. A County official or employee should not accept outside employment with a Contractor if, in his official position, that County official or employee has the authority and opportunity to influence indirectly the County's selection and retention of the Contractor, since this would create an appearance of impropriety.

**ADVISORY OPINION 94-07, January 5, 1995**

County funds may be used to pay the cost of County Council members' dinners at meetings, scheduled prior to County Council's sessions and open to the public, without violating the New Castle County Ethics Code.

**1995**

**ADVISORY OPINION 95-01, September 15, 1995**

A County official or employee may become a candidate for election to political office without violating the New Castle County Ethics Code.

**ADVISORY OPINION 95-02, November 7, 1995**

A County official or employee may participate in an educational seminar organized and sponsored by a private business that regularly conducts business with the County official's agency. However, the County official's agency may not cosponsor the seminar with the private business since this would result in an appearance of impropriety.

**1996**

**ADVISORY OPINION 96-01, January 19, 1996**

A County official or employee may not contract with an agency that is funded by a federal grant, but in other respects has the attributes of a County agency. This would violate the contract and bid restrictions of the Ethics Code and create an appearance of impropriety. These prohibitions vanish if the terms of the grant and the agency's relationship with the County change. For instance, if the county ceases to have fiscal management responsibility for the agency and the agency's staff ceases to be considered County employees, then the agency would no longer be considered a County agency.

**ADVISORY OPINION 96-02, February 20, 1996**

To avoid an appearance of impropriety, a County employee should decline to make a recommendation regarding competing vendor's proposals where one vendor has

suggested to the employee that if its proposal were accepted by the County, the Vendor would be interested in discussing future employment of the employee.

**ADVISORY OPINION 96-03, May 10, 1996**

A vendor may pay the costs attendant a demonstration of an upgraded product to County officials where the vendor currently has a long-term contractual relationship with the County agency. The demonstration is offered to resolve complaints through acquisition of the upgraded product, available to the County under the current contract at no additional cost. This does not constitute an appearance of impropriety because the County officials' decision whether to acquire the upgraded product is not influenced by factors other than the merits, e.g., the vendor's payment of expenses.

**ADVISORY OPINION 96-04, May 10, 1996**

If an individual is a "county employee" as defined by the New Castle County Ethics Code, he or she may contract with the County if the contract's value is less than \$500.00.

**ADVISORY OPINION 96-05, June 30, 1996**

The Board of Pension Trustees may make recommendations regarding and members of County Council may vote on ordinances that would permit County officials and employees, including some members of the Board of Pension Trustees and County Employees' Pension Plan ("3% Plan") to the Employees' retirement System ("5% Plan") or "buy into" the 3% Plan. A conflict of interest is not created because adoption of these ordinances would "affect to the same degree . . . a subclass consisting of an industry, occupation or other group . . ."

**ADVISORY OPINION 96-06, September 12, 1996**

There would be an appearance of impropriety, if an employee of the Development and Licensing Division of the Department of Public Works, accepted an invitation and attended a social function, valued at \$100.00, from a trade association since the employee exercises regulatory control over the trade association's members.

**ADVISORY OPINION 96-07, November 21, 1996**

There would be an appearance of impropriety for County inspectors to sell fund-raising tickets for nonprofit organizations and/or political candidates to the contractors that they regulate since an appearance would exist that County Inspectors are being influenced by the contractor's purchase of the tickets and not by its merits.

**ADVISORY OPINION 96-08, November 15, 1996**

A County pump mechanic may accept a part-time job with a contractor whose pumping station the County pump mechanics regularly visit as a proactive measure even if the pump mechanics' supervisor, superintendent, or head of facility maintenance, will ultimately inspect and eventually accept the pumping station into



the County system since the pump mechanic is not a “County employee” under the Ethics Code. The pump mechanic is not “responsible for taking or recommending official action of a non-ministerial nature” since the pump mechanic does not participate in the determination about whether the County should ultimately accept the station into its system nor does he exercise any non-ministerial duties such that the Ethics Code should apply.

## **1997**

### **ADVISORY OPINION 97-01, January 10, 1997**

There would not be an appearance of impropriety for a County employee with significant non-ministerial planning responsibilities to advise his Church Building Committee on how to process a plan and which departments/agencies to contact regarding Planning and Development and Licensing issues, if he abstains from participating in the processing or decision-making made by the Planning Department or other County Departments.

### **ADVISORY OPINION 97-02, March 14, 1997**

A row office employee may accept a holiday fruit basket valued at \$200 from a client that the employee services, if the basket is shared with the entire office, since the office has minimal regulatory, contractual, or other such contacts with the client and since the value received per person, when the basket is shared, is minimal.

### **ADVISORY OPINION 97-03, March 14, 1997**

There would be an appearance of impropriety if a County Public Works employee with inspecting, licensing, regulating and/or auditing responsibilities accepted a free ticket to attend a Flyers game at the Core States Center in a super/club box from a company with construction projects in New Castle County since the actual cost to the donor and the value received by the recipient exceeds \$75.00 even though the ticket states the cost is \$66.50.

### **ADVISORY OPINION 97-04, March 14, 1997**

There is no violation of the Ethics Code for a County Board member to vote on a matter submitted by the State of Delaware, even if she also serves on the State’s Unemployment Insurance Appeals Board, since the State of Delaware is a nonprofit entity thereby eliminating any potential conflict of interest. Additionally, there is no appearance of impropriety given the nonprofit nature of the State and the limited scope and nature of her state position.

### **ADVISORY OPINION 97-05, April 12, 1997**

It would not be a violation of the Ethics Code for a County Official, who serves as a council member’s aide who has responsibilities with land-use and zoning issues, to be a member of an organization or association that monitors County government issues and which advocates its positions before County Council and County boards. An appearance of impropriety is created, however, if the County Official were to

hold office, serve as a member of the board of directors in the organization/association or be a member or chair a committee that deals with the issues she deals with in her County position. Given the fact that the Official's immediate supervisor would have to vote on issues affecting the organization/association and the difficulty of the Official to abstain from any work that would impact the organization/association, the County Official should not hold office, serve as a member of the board of directors or be a member or chair any committee dealing with the issues she deals with in her County position.

**ADVISORY OPINION 97-06, April 12, 1997**

There is no violation of the Ethics Code if a County board member, who is also an attorney, were to continue to represent a client, after his appointment to the board, in an appeal of a case to the Delaware Supreme Court, contesting a decision of the board on which he sits since he was not a member of the board when the issue was first decided by the board nor when he began his representation of the client.

**ADVISORY OPINION 97-07, April 12, 1997**

An appearance of impropriety would exist if a County Public Works employee, whose duties include reviewing plans for persons or businesses seeking permits, were to obtain part-time employment with a business which frequently submits plans for review and works in tandem with the construction trade even if the employee's part-time work was for a different County and he abstained from reviewing any plans in the County from his prospective part-time employer.

**ADVISORY OPINION 97-08, October 15, 1997**

An individual employed by the County on a part-time basis, who has previously contracted with the County to teach a course, may contract with the County to teach another course to the public, if the value of the second contract is less than \$500, provided that the decision about who the County should hire is made, and the performance evaluation conducted, by the employee's supervisor. Additionally, the individual should report said involvement with the County on the yearly Statement of Financial Interests form if the threshold amount is met for reporting.

**ADVISORY OPINION 97-09, October 29, 1997**

It does not violate the Ethics Code for a County employee, involved in community, development and housing, who exercises discretion in the administration of HUD funds, to serve on the board of directors of a nonprofit organization which, through a joint venture, operates a program in conjunction with another organization that has been a recipient of the County administered HUD funds. If, however, any organization, which receives funds from, or is in a joint venture with, the nonprofit organization should become an applicant for County administered HUD funds, the County employee should follow the procedure set forth in Section 2-173(f) of the Ethics Code, regarding disclosure and voting conflicts.

**ADVISORY OPINION 97-10, October 29, 1997**

A County official may accept an unsolicited honorarium, to be donated to charity, not exceeding a net amount of \$75.00, in the aggregate, per year, per donor, for performing his normal County duties, when requested, during non-work hours and at a location other than the County building.

**ADVISORY OPINION 97-11, December 10, 1997**

A County employee involved in community, housing and development, who exercises discretion in the administration of HUD funds with regard to a particular project, may serve on the Board of Directors of a nonprofit organization which may be an applicant for said funds. The employee, however, must exercise caution to ensure that he is aware of any potential areas which may result in appearances of impropriety, and recuse himself when appropriate.

**1998**

**ADVISORY OPINION 98-01, June 16, 1998**

An agreement between a County Employee and his Department Manager stating that a County Employee can operate a private business, which is substantially similar to his County position, provided, among other limitations, that none of the employee's work in his private business, to his knowledge, would be processed by New Castle County and the employee agrees to periodically submit a list of clients and corresponding property locations to his Department Manager, is in compliance with the Ethics Code. The employee must be sensitive to recognize, however, that he must also abstain from conducting any private business, should the occasion arise in his private business, which might present a conflict of interest or appearance of impropriety with his County work.

**ADVISORY OPINION 98-02, June 16, 1998**

It does not violate the Ethics Code for an individual employed by the County, who owns and operates a private business and whose County job responsibilities include providing information, assistance and direction to the public, to bid and contract with the County for a contract valued over \$500, on behalf of her private business. Since the individual is not considered a "County employee" under the Ethics Code, the restrictions of the Ethics Code do not apply to her.

**ADVISORY OPINION 98-03, July 21, 1998**

A county employee is not required to disclose on his Statement of Financial Interests form the receipt of airline tickets, lodging, and travel advances for per diem expenses he receives for participating as a faculty member in a training program from an organization that is a component of the Federal government. The Ethics Code does not address use by County officials or employees of County property or time. It therefore does not require a County employee to use vacation time for time spent at a training program from an organization which is a component of the federal government.

**ADVISORY OPINION 98-04, October 6, 1998**

Individuals who are employed by the County, and whose job duties include performing an evaluation of another individual's job performance, are considered "County employees" for Ethics Code purposes and, accordingly, required to file a Statement of Financial Interests form.

**ADVISORY OPINION 98-05, October 6, 1998**

An individual who is employed in the Department of Community Services may apply for and, assuming satisfaction of all requirements of an established loan program, receive a New Castle County Community Services administered Housing Rehabilitation loan, since the homeowner's County job responsibilities do not include taking or recommending official action of a non-ministerial nature.

**ADVISORY OPINION 98-06, October 6, 1998**

The name and address of a lessor, who has entered into a lease agreement for property or goods with a person required to file a Statement of Financial Interests form, or a business with which he is associated, must be reported on the annual Statement of Financial Interests form by the person required to file such a statement, if the total amount due under the lease is over \$5,000. The address of any property leased by the reporting person should also be reported on the Statement of Financial Interests form.

**ADVISORY OPINION 98-07, October 6, 1998**

The borrowing of funds by a County official or employee from the county official's or employee's own 401(k) retirement account does not constitute a debt, such that it must be reported on the County official's or employee's Statement of Financial Interests form.

**ADVISORY OPINION 98-08, January 5, 1999**

There is no violation of the Ethics Code for a County employee and a County official, as defined by the Ethics Code, who work in different departments, and who have no interplay or interaction between their County jobs, to be partners and operate a business unrelated to the County.

**1999**

**ADVISORY OPINION 99-02, March 2, 1999**

The Director or head of the department or agency which previously employed a former County employee may have access to the former employee's Statement of Financial Interests form.

**ADVISORY OPINION 99-03, August 3, 1999**

There is no violation of the New Castle County Ethics Code for a member of County Council to advocate a position on a zoning text amendment before the Planning Board.

**ADVISORY OPINION 99-04, November 9, 1999**

There is no violation of the New Castle County Ethics Code for a member of the Board of Adjustment to serve as president of his neighborhood civic association. The Board of Adjustment member, however, should follow the recusal procedure set forth in Section 2-83(f) of the Ethics Code, if a matter affecting his neighborhood civic association comes before the Board of Adjustment.

**ADVISORY OPINION 99-05, November 9, 1999**

There is no violation of the New Castle County Ethics Code for an employee who works in the complaints office to apply for and, if qualified, receive a County administered home repair loan.

**ADVISORY OPINION 99-06, November 9, 1999**

There is no violation of the New Castle County Ethics Code for a Human Resources employee to work as an independent contractor for the State of Delaware in an area having no involvement with her current County position.

**ADVISORY OPINION 99-07, December 14, 1999**

There is no violation of the New Castle County Ethics Code for a planner to review a plan: (1) effecting the general area where the planner resides; or (2) from an applicant club to which the planner belongs; provided sufficient safeguards are taken for review by other land use personnel and full disclosure is made to the planner's superiors, other land use staff working on the project and to the applicants.

**ADVISORY OPINION 99-08, January 11, 2000**

Absent additional facts being provided where an appearance of impropriety can be conclusively ruled out, a County official should follow the recusal procedure set forth in Sec. 2-83(f) of the Ethics Code and disclose the nature of his or her interest and abstain from voting or sponsoring a matter, if the County official's parent is doing business on an unrelated project with the owner, although not the applicant, of the land subject to County approval.

**2000**

**ADVISORY OPINION 00-02, Reconsideration June 12, 2000**

While an appearance of impropriety is created, if a county official were to participate in a matter where a client of her prospective employer has an interest, an exception exists where: (1) the conflict or appearance of impropriety did not exist at the time the requesting party completed substantial work on the matter; and (2) the official's vote

and sponsorship appear to be contrary to the client's, her prospective employer's and her own interest. Full disclosure of her relationship with the prospective employer to the public, however, must be made immediately, if she is to continue sponsorship and also must be made prior to voting at the meeting where the vote is to be made.

**ADVISORY OPINION 00-02, June 20, 2000**

Under present circumstances, it would not violate the Ethics Code for a County assessor to have secondary employment in the private sector, working as an appraiser for an appraisal company in matters other than tax appeals.

**ADVISORY OPINION 00-04, December 11, 2000**

A County employee may enter into a contract with the County to perform short-term, seasonal employment, even though the value of the contract is over \$500 by a de minimis amount, if there is public notice of the position and competitive bidding available. In addition, in this instance, the County employee works for a department, other than the one from which the contract originates, and the County employee does not report to, and is not under the supervision of, the person choosing or monitoring the recipient of the contract, thereby eliminating any conflict of interest, appearance of impropriety, or other Ethics Code violation.

**ADVISORY OPINION 00-005, December 11, 2000**

A County employee is not required to file a 1998 or 1999 Statement of Financial Interests form when his supervisory and evaluation responsibility towards other employees is minimal and an incidental portion of his overall responsibilities, such that his actions cannot be deemed an "official action of a non-ministerial nature".

**ADVISORY OPINION 00-06, January 25, 2001**

New Castle County employees or officials, who are either County Attorneys or who serve the County in a managerial capacity, who wish to have private legal practice, are limited by the restrictions on representing another's interest before the County as set forth in Section 2-83(b) of the Ethics code. Additional restrictions, such as restrictions on the exercise of official authority, Section 2-83(a), and those contained in Section 2-84, including the prohibition on appearances of impropriety, further restrict the nature and scope of the attorney's secondary employment in the private practice.

**2001**

**ADVISORY OPINION 01-01, February 28, 2001**

There is no violation of the Ethics Code for a County plan examiner to have secondary employment in the private sector drafting shop details of construction materials for a

company that does not do business with the county, submit plans for County review, or applies for licenses/permits from the County in the regular course of its business.

**ADVISORY OPINION 01-03, March 21, 2001**

It would not violate the Ethics Code for a Special Services inspector to have secondary employment conducting residential inspections to determine the condition of residential properties, except that he may not inspect new construction, nor conduct inspections to determine New Castle County Code compliance.

**ADVISORY OPINION 01-04, October 3, 2001**

Assuming applicability of the post-employment restrictions of the Ethics Code, it would not violate the Ethics Code for a former County official to represent an applicant before the board he formerly chaired, even if the former official's service with the board he formerly chaired ended less than two years before his proposed representation of the applicant, since, in the particular instance, the former official; (1) did not give an opinion; (2) did not conduct an investigation; and (3) was not otherwise directly and materially responsible for such matter in the course of his official duties as a County official.

**ADVISORY OPINION 01-06, January 29, 2001**

It would violate Section 2.03.103(B) of the Ethics Code, if a County board member were to represent or assist clients of his private employer/firm, for a profit business, with respect to a matter before County Council, a County Department, or other County Board or Commission.

**ADVISORY OPINION 01-07, November 13, 2001**

It does not violate the Ethics Code for a Land Use inspector to personally build an addition on his own home, even if he would need to obtain permits from the Land Use Department and the plans for the addition and the construction would need to be reviewed and/or inspected by his co-workers in the Inspection Division and Land Use Department, if: (1) the inspection is performed by an inspector other than the inspector performing the construction work; (2) the inspector inspecting the construction is not a subordinate to the inspector performing the construction work; (3) the inspector is performing work on his home for his own residential purposes, as opposed to a third party, or as for a profit business of the inspector; and (4) the inspector performing the construction makes appropriate disclosures to the supervisor of the Inspection Division.

**ADVISORY OPINION 01-08, October 16, 2001**

It does not violate the Ethics Code for a Land Use employee with land use and code inspection responsibilities, who also is a volunteer director of a non-profit organization, to participate in fundraising, public relations, and facility development on behalf of the

non-profit organization, provide he does not seek to use his County position to influence any application or matters that the nonprofit organization has with the County; he recuses himself and abstains from participating in any matter that the nonprofit organization has with the County Land Use Department that employs him; and he uses sufficient safeguards to eliminate any appearance of impropriety which might exist regarding fundraising by the requesting party on behalf of the non-profit organization.

**ADVISORY OPINION 01-09, December 20, 2001**

To avoid a conflict of interest or appearance of impropriety, a County official should not obtain secondary employment with a vendor who has an ongoing lease agreement with the County, if the County official was instrumental in choosing the vendor and he has direct and ongoing responsibilities to oversee and monitor the obligations and responsibilities of the vendor under the lease.

**ADVISORY OPINION 01-10, December 20, 2001**

Assuming the applicability of the post-employment restrictions of the Ethics Code, in this instance, it would not violate the Ethics Code for a County employee, whose job involves the reviewing and processing of forms and applications prepared by the public, to obtain employment in the private sector shortly after retirement from County employment, working on the type of forms and applications she reviews and processes in her current County position. There is no violation of the post-employment section of the Ethics Code in such instance, since her capacity as a County employee, she would not have: (1) given an opinion; (2) conducted an investigation; or (3) otherwise been directly and materially responsible for such matter in the course of her official duties.

**2002**

**ADVISORY OPINION 02-01, June 21, 2002**

A County Police employee who does not have law enforcement responsibilities may become a candidate for State political office and may accept properly reported political contributions but must be cognizant of circumstances that may arise which could create a potential or real appearance of impropriety.

**ADVISORY OPINION 02-02, June 16, 2002**

A relative of a Community Services employee who has responsibility for the administration of a Community Services Home Repair Program may receive a loan through the program if the relative is qualified according to the program's requirements, the employee does not represent or assist the relative, and the employee recuses himself or herself from the participation in the relative's application. The employee must



immediately disclose the relationship to his or her supervisor and the supervisor must perform the employee's responsibilities related to the application.

**ADVISORY OPINION 02-03, June 16, 2002**

Under the specific facts presented to the Commission, a County official, a former board member whose service terminated less than two years earlier, may represent an applicant before his former board if the official did not give an opinion, conduct an investigation, or was otherwise directly and materially responsible for the matter in issue during the course of his former official duties.

**2003**

**ADVISORY OPINION 03-01, May 14, 2003**

A county planner, who has non-confidential, ministerial duties related to the County's HUD planning process, may take secondary employment with the City of Wilmington entering the City's HUD data into the City's database.

**ADVISORY OPINION 03-02, September 16, 2003**

An employee of the Clerk of the Peace may receive a Department of Community Services Home Repair Grant if the employee meets the program qualifications.

**ADVISORY OPINION 03-03, September 10, 2003**

There is no violation of the New Castle County Ethics Code for an employee who works as a crossing guard to apply for and, if qualified, receive a County Administered home repair grant or loan.

**ADVISORY OPINION 03-04, September 16, 2003**

A school crossing guard, a County employee, may receive a Department of Community Services Home Repair Grant if the employee meets the program qualifications.

**ADVISORY OPINION 03-07, December 24, 2003**

A Deputy Administrator of a County row office who has responsibilities for the selection of office computer systems may not accept transportation and lodging payments for a demonstration of computer equipment from a potential vendor of office computer systems.

## 2004

### ADVISORY OPINION 04-01, January 14, 2004

When an ordinance would affect to the same degree a subclass consisting of an industry, occupation, or other group which includes a County official, the Ethics Code does not prohibit a vote by that official.

### ADVISORY OPINION 04-03, April 14, 2004

The unique circumstances surrounding a private contract for necessary home repairs between an employee and a business which is approved for work with the employee's department negate a conflict of interest or appearance of impropriety. The employee has no personal relationship or financial interest in the contractor, the contractor's bid is the highest of three bids solicited by the employee, the department shall use procedures to eliminate the employee's direct or indirect authority in regard to the contractor for the duration of the private relationship, and the contractor publicly bids work for the department.

### ADVISORY OPINION 04-04, April 14, 2004

An employee may purchase salvage items from a business regulated by her department because the availability of the items was public knowledge, she did not secure information about them as a result of her status as a County employee, she does not have a personal relationship with the business owner, she has no financial interest in the business, she has only ministerial contact with the business, the value of the items is negligible if at all, and she disclosed her intention to enter into the transaction to her departmental superiors and received their approval.

### ADVISORY OPINION 04-07, May 17, 2004

An official who is representing a nonprofit association, which is tangentially related to his official duties, at a conference staged by a second nonprofit organization may accept a gift of a reasonable amount of lodging and transportation expenses from the second organization because he is not acting in his capacity as a County official and because the circumstances do not raise the potential for an appearance of impropriety.

### ADVISORY OPINION 04-08, June 17, 2004

An employee may not accept a gift of a complimentary registration from the sponsor of a conference since the sponsor is a current vendor for the County, the conference will include presentations about the vendor's new products, and the employee has the authority to affect the County's future contractual relationships with the vendor.

### ADVISORY OPINION 04-09, July 14, 2004

A senior County employee who has secondary employment as a self-employed contractor in another jurisdiction may be associated with his son's business in geographic jurisdictions outside New Castle County if his son's business is not

regulated by New Castle County. If the son becomes subject to regulation by the employee's department, the employee would not be permitted to be associated with the son's business because recusal would not be a sufficient tool to remove the appearance of impropriety from such association.

**ADVISORY OPINION 04-10, July 14, 2004**

A County employee may secure secondary employment as a self-employed tradesman as long as his secondary employment does not require regulation by his department, and he does not perform services for any entity that submits plans to his department for review or which is regulated by that department.

**ADVISORY OPINION 04-11, August 11, 2004**

If a County official's spouse, or a business with whom the spouse is associated, has not or does not represent a client in a matter before the official's agency and is not otherwise financially benefited in the matter, a conflict of interest does not arise from an official's sponsorship and/or vote. However, an appearance of impropriety may arise from the sponsorship and/or vote in the absence of a conflict of interest, since the wife's business' client has a pecuniary interest in the matter and a reasonable member of the public may believe that the sponsorship and/or vote is being made to advance the spouse's business interests with that client. The official must withdraw his sponsorship and recuse himself from deliberation and vote in the matter as described in New Castle County Code section 2.03.103(A)(2).

**ADVISORY OPINION 04-14, February 9, 2005**

An official must decline an offer of outside employment. The Ethics Code prohibits County officials from representing private enterprises, for payment or on a volunteer basis, before any department of the County other than in the context of his or her official duties. If the official accepts employment with the outside enterprise, he cannot adequately protect the public interest when that enterprise has contact with his or her agency. Limiting the agency's contact with the employer would result in an improper restriction on the flow of public service from the agency. Recusal is not a satisfactory option in this situation because of the size of the agency.

**2005**

**ADVISORY OPINION 05-02, February 9, 2005**

A limited exception to the prohibition on representing outside enterprises before an employee's department may exist when the representation concerns construction on a personal residence. A high-ranking employee may act as general contractor for the construction on his personal residence and represent himself before his department for the necessary approvals, permits, inspection and certificates if his department has or establishes a procedure ensuring that approvals of all such applications are issued only on the personal authority of an employee of higher rank. He may not discuss with any subordinate, peer, or agent for anyone in his chain of supervision any matters related to the construction other than those topics discussed with any

other County resident acting in the role of general contractor. In addition, for the duration of his project, the requesting employee must recuse himself from planning, discussion or implementation of any proposed regulations or ordinances which could affect his conduct as a general contractor on this particular project.

**ADVISORY OPINION 05-03, May 11, 2005**

An employee who personally represents the County Executive would create an appearance of impropriety if he continues to have editorial or content control of his privately-owned specialty newspaper. He may retain ownership but must relinquish any other involvement. He must also resign from office in and spokesperson status for a nonprofit association which receives County funds. He may retain membership in the association as well as membership in another related nonprofit organization but must limit his spokesperson duties in the latter organization to comments on factual operational matters unconnected with County policies, procedures or positions.

**ADVISORY OPINION 05-04, March 9, 2005**

A business which is associated with a County Official is prohibited from contracting with the County for professional services unless a public notice and competitive bid process is used.

**ADVISORY OPINION 05-05, March 9, 2005**

An employee of a County department which receives federal funds in the form of a grant for countywide purposes may serve on the Planning Commission of a local government as long as she recuses herself from any discussion or action on any non-ministerial matters performed in or by her Department concerning the local government.

**ADVISORY OPINION 05-06, April 13, 2005**

An elected official may accept employment with a business involved in land use matters if he recuses himself from all issues affecting the private employer, including indirect policy making and discretionary implementation matters which affect the private employer's business in a degree different from other businesses in the same industry or class, and the official will be required to seek clarification from the Ethics Commission regarding his involvement in policy decisions affecting his employer on a case by case basis.

**ADVISORY OPINION 05-07, May 11, 2005**

An appearance of impropriety will not be created if a County official, who was formerly employed by another government, represents the County in a matter where the other government is also involved, since the official had no responsibility for or participation in the conduct of the other government when he was its employee and the position of the other government is not adverse to that of the County.

**ADVISORY OPINION 05-08, May 11, 2005**

A current County official, who formerly served in a confidential capacity in another branch of County government, would not violate the Ethics Code if the official undertook the representation of the County in litigation which is unrelated to the duties performed in the other branch of County government.

**ADVISORY OPINION 05-09, May 11, 2005**

A County official may accept an invitation, valued at more than \$75.00, from enterprises doing business with the County to attend public events held by nonprofit associations because, under the factual circumstances, a reasonable member of the public would not believe that accepting the invitations would impair the official's integrity, impartiality, or competence. The invitations are extended for publicly advertised events, there are numerous other invitees representing a broad cross section of the public who are similarly unrelated to the donors, opportunity for private contact from the donors is limited by the public nature of the events, the value of the invitation is not at a level which would create a sense of obligation in the recipient, acceptance creates a public benefit in the opportunity for County government to disseminate and exchange ideas with little cost to the taxpayer, the Ethics Commission has the ability to address the ethical issues in advance of acceptance, and the official is required to timely report the acceptance of the gift in a public document.

**ADVISORY OPINION 05-10, May 11, 2005**

An individual who contracts with the County to provide professional services does not become a County official or employee because of that relationship and is not under the jurisdiction of the Ethics Commission.

**ADVISORY OPINION 05-11, May 11, 2005**

A recently appointed County official who maintains an outside business unrelated to his County duties which provides a free service to the public at a County sponsored event under a long-standing contract with a local business does not violate the Ethics Code.

**ADVISORY OPINION 05-12, June 8, 2005**

An official is not required to recuse himself from an appeal to a board on which he serves because he made a limited prior negative comment on the conduct of the appellant in his status as a private citizen at a time when there was no indication that the matter would come before the Department from which his Board hears appeals. The official has disclosed the substance of the comment to the appellant and his fellow board members, the appellant is aware of the official's prior association with persons opposing it, neither the official nor any relative has a pecuniary interest in the subject of the appeal, the official states that he can act with impartiality, and the appellant, with knowledge of the foregoing, affirmatively

expresses confidence in the official's objectivity and states that it does not object to presenting the appeal before the board under these circumstances.

**ADVISORY OPINION 05-13, June 8, 2005**

Persons hired by the County as public works inspectors may not be employed to conduct new home inspections in outside businesses.

**ADVISORY OPINION 05-14, June 8, 2005**

An employee may not accept a gift which is akin to a reward valued at over \$1,000.00 for performing his County duties but may accept a token recognition gift valued under \$75.00 and the donor may make a donation to a charity of the donor's choice in honor of the employee's heroic conduct.

**ADVISORY OPINION 05-15, July 13, 2005**

A County employee may run for State public office and assume it if elected but must observe the restrictions recited in the Code against creating appearances of impropriety or other ethical violations while campaigning for or after election to State office.

**ADVISORY OPINION 05-16, July 13, 2005**

A County department may not accept a complimentary registration from the sponsor of a conference because it would create an appearance of impropriety since the sponsor is a current County vendor, the conference will include presentations about the vendor's new products, and the department has the authority to affect the County's future contractual relationship with the vendor.

**ADVISORY OPINION 05-17, August 10, 2005**

The two-year post-employment provision of Code Section 2.03.103(D) impacts a former employee and the County for all projects which were funded in the Department's budget during the individual's County employment because his assignment to or review of those projects is understood to be direct and material responsibility. If the employee was merely conscious of the unfunded projects and did not review or have any other responsibility for them, the post-employment provision will not apply to the former employee's participation with the new employer. Section 2.03.103(D) is directed only to the conduct of the employee and the County and if the new employer agrees not to use the employee in the affected contracts during the two-year period, that section does not prevent a contractual relationship between the new employer and the County.

**ADVISORY OPINION 05-18, July 13, 2005**

An employee's purchase and lease back of a residential building from a new home construction company will not violate the Ethics Code as long as he adheres to the following conditions: He must fully disclose all business relationships with the builder to his superiors; he must disclose the lease arrangements to the Ethics Commission;

he must completely recuse himself from direct or indirect involvement in any of his Department's business which concerns the builder for the duration of his business relationship with the builder; he must scrupulously avoid using confidential information acquired by virtue of his County position for the personal benefit of his private enterprise. The Commission's response to the employee's Opinion request involves only the application of the Ethics Code and does not prevent the employee's department from imposing greater restrictions.

**ADVISORY OPINION 05-19, August 10, 2005**

When an official has legal and or statutory responsibility with respect to action or nonaction on any matter where the person, a member of his immediate family or a business with which he or his immediate family has a personal or private interest, and there is no provision for delegation of such responsibility to another person, the official may exercise responsibility with respect to such a matter, provided that he recuses himself from any involvement as far as legally permissible and files a written statement with the Commission fully disclosing the personal or private interest and explaining why it is not possible to delegate responsibility for the matter to another person.

**ADVISORY OPINION 05-20, September 14, 2005**

The two-year post-employment provision of Section 2.03.103(D) will not impact a retiring employee because there is no overlap between the subject of his County duties and his function for the new employer. However, that section permanently prohibits the retiring employee's use of confidential information acquired while in County employment for the benefit of the new employer or himself.

**ADVISORY OPINION 05-21, October 12, 2005**

In order to avoid creation of an appearance of impropriety, an employee must remove himself from any County employment which provides access to confidential information regarding land use or redevelopment policy affecting a local government employer's annexation authority unless he recuses himself from involvement as an elected local official from any aspect of planning, execution or decision making regarding the annexation of County land, including voting upon such requests.

**ADVISORY OPINION 05-23, December 14, 2005**

There is no conflict of interest in exercising County authority in regard to the application before the regulator Board since no financial benefit from the vote will accrue to the board member, his family or to a business with which he is associated. Alternatively, even if there were some slight financial benefit to him as a customer of the business in terms of a general reduction of charges for or enhancement of his contract, that benefit would affect the board member in the same degree as all of the applicant's County customers and is a legislative exemption from the conflict of interest rules. There is no reasonable perception that the board member's vote would create an appearance of impropriety.

**ADVISORY OPINION 05-24, December 28, 2005**

An elected official may join the board of the nonprofit if he reveals the potential areas of conflict to both the private entity and the appropriate County authority and requests that both the entity and the

County permit him to recuse himself from the activities which may cause an appearance of conflict, including policy making, promotion or other activities concerning the nonprofit's relationship with the County.

**ADVISORY OPINION 05-25, December 28, 2005**

An official may accept tickets from a nonprofit since he does not have any financial interest in the entity, the nonprofit does not do business with nor is it regulated by the County and, in light of the value of the tickets and under the circumstances reported, a reasonable member of the public would not believe that acceptance of the tickets would impair the official's independent judgment or that the official was using his public office for private gain.

**ADVISORY OPINION 05-26, December 28, 2005**

The County may hire the best candidate for any position despite that person's outside employment as long as the outside employment does not create a conflict of interest or an appearance of impropriety. In this case, the candidate's outside employment as a real estate agent and fundraiser do not create a conflict or improper appearance as long as the employee conceals his employment with the County and does not solicit clients of his agency when engaged in those activities. However, given the particular confidential information involved in the County position, an appearance of impropriety would be created if the candidate were permitted to continue his employment as a private investigator.

**2006**

**ADVISORY OPINION 06-01, March 8, 2006**

A County official and his wife may accept a gift from a nonprofit trust to attend a private event which is widely publicized in the media even though the trust's agent extending the gift on behalf of the trust is a profit-making entity which is reasonably expected to seek business with the County in the future. The trust neither has nor will have any connection with County government. A negative perception of bias in favor of the agent is ameliorated because the value of the invitation, though significant, is not at a level which would create a sense of obligation in the recipient or concern on the part of the reasonable person, the official is required to report the acceptance and estimated value of the gift in a document which can be scrutinized by the public, and the opportunity for private contact with the agent is limited by the nature of the event. In addition, the event is widely reported and attended by the media, there are numerous other attendees representing a broad cross section of the public who do not have a business relationship with the agent who are also similarly invited, the event celebrates examples of conduct important to the public which reinforce cherished public values, and the official has reduced



the appearance of partiality or bias by requesting an advisory opinion prior to accepting the gift.

**ADVISORY OPINION 06-02, March 8, 2006**

An employee may not enter into a business association with a consultant currently under contract with the County for the duration of the consultant's non-bid contract. The formation of a business association while the non-bid contract is in force would violate the Ethics Code by creating an appearance of impropriety and would violate the intent of the Code's restrictions on contract and bid.

**ADVISORY OPINION 06-03, April 12, 2006**

A County official, appointed by the County Executive to serve on the board of directors of a nonprofit entity, and who conducts contract negotiations on behalf of the County with the nonprofit, cannot sustain the appropriate fiduciary duty to both the board and the County during those negotiations. Recusal by the official from the negotiations would unfairly deprive the public of the official's important services and abstention from voting on the contract would not ameliorate the appearance that the nonprofit unfairly benefited in the negotiations. The official must relinquish the board position in order to avoid a violation of the Ethics Code.

**ADVISORY OPINION 06-04, April 12, 2006**

The jurisdiction of the New Castle County Ethics Commission is limited to interpretation and application of the Code of Ethics. The Commission is without authority to determine whether investigatory research and/or substantive guidance provided by a regulatory board to an applicant prior to adjudication would be an improper commingling of investigative and adjudicative functions in violation of administrative or constitutional law and thereby create an appearance of impropriety. The requester is referred to the County Law Department for determination of the question. If the Law Department finds that the proposed conduct comports with administrative or constitutional law, a question of appearance of impropriety does not arise as long as the information is transmitted to the applicant in a manner which does not exclude the public.

**ADVISORY OPINION 06-05, April 12, 2006**

An employee may accept outside employment since the outside employer does not do business with the Land Use Department nor require regulation by it. If the outside employer does business with the Land Use department or is regulated by it by it in the future, the employee may not continue in the employment because she would violate the appearance of impropriety provisions of the Code.

**ADVISORY OPINION 06-06, April 12, 2006**

If a measure subject to an official's vote affects his financial interests or those of his immediate family or a business with which he is associated, the official must recuse himself from all further participation in the matter. If the measure has no beneficial or detrimental effect on his financial interests, those of his immediate family or an

associated business, and surrounding circumstances do not otherwise create an appearance that he is biased or cannot act impartially, his vote will not violate the Ethics Code.

**ADVISORY OPINION 06-07, April 12, 2006**

It would not violate the Code of Ethics if an employee accepted a gift of negligible value from a vendor under the described circumstances, but the employee must also comply with the arguably more strict administrative personnel policy 5.04 and conform his conduct to the subsequent decision of the General Manager of his department.

**ADVISORY OPINION 06-08, June 14, 2006**

The employee must recuse herself from all participation in the issue, including research for and discussion of the County's proposed action, and must ask her superiors to direct subordinates not to report to her about the matter because the action to be taken by the County department affects the financial interest of the employer of the member of the County employee's immediate family.

**ADVISORY OPINION 06-09, June 14, 2006**

New Castle County Code Section 2.03.104(J) prohibits solicitation from entities which do business with or are regulated by New Castle County except when such solicitation is pursuant to a New Castle County written policy decision made for the benefit of the public. Any proposed solicitation of donor groups which include entities doing business with or regulated by the County must be reviewed in advance by the Ethics Commission for compliance with the appearance of impropriety provisions of the Ethics Code. Improper appearance and ethical violations can be avoided only if the following limitations are observed: a public purpose is clearly identified in the written policy authorizing the solicitation; cash donations shall not be accepted; the donors are not identified publicly or privately as joint sponsors; a written solicitation, emphasizing the voluntary nature of the contribution and the absence of any effect on current or future County relationships, should be made to all potential appropriate donors by the County Executive on behalf of the citizens of the County; a donor must provide written corroboration identifying and valuing a donation at the time it is made; the employee or official who accepts the donation may not have provided, and his or her department may not provide in the reasonably foreseeable future, direct services for the donor; a contemporaneous public document is maintained which lists the donors, type and value of all donations.

**ADVISORY OPINION 06-10, June 14, 2006**

An official who chairs a section of a charity's fund-raising campaign has a private interest in the charity different from the County's interest as a participating employer assisting in raising funds for the charity. When performing as a chairperson for the charity, the official may not use County time or County resources, solicit County employees or officials to volunteer for the campaign or contribute to it without violating the conflict of interest provision of the Code of Ethics. However, County

officials and employees who do not have a similar functional position with the charity who volunteer to assist the County government employer in the portion of the campaign it sponsors may solicit in a non-coercive manner among employees provided they do not personally solicit their subordinates.

**ADVISORY OPINION 06-11, July 12, 2006**

The official is not required to recuse himself from further proceedings involving the agent. Personal animosity is insufficient to show bias in the absence of substantial facts demonstrating that the disfavor actually infects the official conduct or that a reasonable member of the public would believe that the personal dislike is likely to adversely affect official conduct. The burden of demonstrating bias on the part of a government employee or official requires a showing that the official or employee's conflicting interest in the outcome of the proceeding is concrete, personal and not remote. The accusation at issue is limited to a claim of personal animosity toward the applicant's agent and does not implicate a violation of the conflict of interest rules. Assuming awareness of all of the agent's accusations as well as the comment made by the official cited by the agent, a reasonable member of the public would not find the agent's evidence compelling or reach a conclusion that the official's decision on the application would be infected with bias.

**ADVISORY OPINION 06-12, September 13, 2006**

An employee may serve on a municipal regulatory board as long as he recuses himself from any policy-making, planning or decisions on matters performed by the County for the municipality and refrains from disclosing non-public information he may obtain in his County position to, or use it for the benefit of, the municipality. In addition, he must be careful not to attempt to influence official conduct of fellow County employees or officials as they deal with the municipality in the course of their County positions.

**ADVISORY OPINION 06-14, October 11, 2006**

An official's wife's potential employment by a vendor would have a direct and predictable effect on the official's financial interests and his County authority regarding the vendor. Such a situation would cause a reasonable person with knowledge of the relevant facts to question the official's impartiality toward the vendor. The official properly took immediate steps to disclose all the facts to his superiors and to recuse himself from any role in managing the vendor contract. There do not appear to be any additional procedures to use to complete the necessary disclosure and recusal process.

**ADVISORY OPINION 06-15, December 13, 2006**

An employee can avoid an Ethics Code violation by restricting his consulting services to entities that neither operate in New Castle County nor involve his County department in any way. Since his spouse's business is located in and conducts business in New Castle County and may be regulated by his department, the

appearance of impropriety provision of the Code prohibits extending consulting services to or employment in that business.

**ADVISORY OPINION 06-16, December 13, 2006**

A manager may give and his supervisees may accept holiday gifts of de minimis value. The Ethics Code discourages and draws some clear lines about gifts to officials and employees from the public and creates guidelines about acceptable gifts from subordinates to supervisors, but it neither discourages nor encourages gifts from supervisors to subordinates as long as the gifts do not violate the conflict of interest or appearance of impropriety rules. In this case, the motive for the gifts from the supervisor is appreciation, the employees have no official authority over the supervisor, the gifts will be valued at a \$50.00 or less and will be tendered to all his supervisees on a holiday occasion known for a tradition of exchange of gifts between acquaintances and coworkers. Under these circumstances, the presentation to and acceptance of gifts by the supervisees does not violate the conflict of interest or appearance of impropriety rules of the Code.

**2007**

**ADVISORY OPINION 06-17, January 10, 2007**

In the absence of facts supporting a perception of collusion or improper conduct on the part of the requesting official, if the requesting official casts his vote upon sole consideration of the public's interest in a matter concerning his fellow official's spouse, he will not violate the Code of Ethics. If the requesting official believes that the public interest may be better served by disclosure of his concern over improper appearance, he may invoke the disclosure and abstention procedure outlined in the Ethics Code.

**ADVISORY OPINION 07-01, February 16, 2007**

Advertising to secure or maintain public office is a constitutionally protected right and in itself does not reflect any improper motive to obtain special treatment. Absent some concrete evidence that an office holder uses such advertising to obtain unwarranted privilege or to avoid some personal consequence for his conduct in the vehicle, the presumption of good faith is accorded to the official

**ADVISORY OPINION 07-03, February 16, 2007**

The official would not violate the Code of Ethics if he accepts the nomination for or appointment to the State commission. There is no nexus between his exercise of County authority and the State commission's subject jurisdiction. He is qualified for the nomination and appointment as a result of his long-standing outside activities, not because of his County position.

**ADVISORY OPINION 07-04, March 14, 2007**

The employee is prohibited from entering into any outside relationship in which an associated business would come before him or his department. If the employee's

proposed outside land use enterprise does not do business with or require any regulation by the County, the employee may operate such a business without violating the conflict of interest provisions of the Ethics Code. However, if such an outside business enters into a subcontract with a contractor which does do business with or is regulated by the employee's department, even if the subject of the subcontract is a project outside New Castle County, the employee would violate the appearance provisions of the Ethics Code.

**ADVISORY OPINION 07-05, April 11, 2007**

Question 1: The official should not vote on the ordinance if his outside employer represents a client that has a potential or actual financial interest in the matter. However, if he decides that the public interest requires him to cast his non-delegable vote, he must follow the procedure described in Code Section 2.03.103(A)(2) and provide a written description of the ethical issue to the Commission and read that communication into the public record before he votes. If he abstains from vote he must simply declare on the public record the reason for his abstention.

Question 2: In this unusual circumstance where the law constrains the official's discretion regarding the vote on this matter, if the outside employer's client loses its bid for partnership with the developer and has no reasonable expectation of future financial interest in the matter, the official may vote after he discloses on the public record the outside employer's client's previous interest in the subject matter of the ordinance.

**ADVISORY OPINION 07-06, April 11, 2007**

The Commission finds that violation of the Ethics Code can be avoided in the matter of a contract between the official's non-profit agency and the County only by compliance with the notice and bid provisions of Section 2.03.103(C). The Commission does not believe that substitution of another signer or recusal on the part of the official would prevent the creation of an appearance of impropriety because the high standing of the official as the chief operating officer of the non-profit. Absent use of the notice and bid procedure, a reasonable member of the public would conclude that the contract was awarded to the non-profit because of the official's relationship to County government, not as a result of its merits.

**ADVISORY OPINION 07-07, April 11, 2007**

Since the outside employer does not do any business with and is not regulated by New Castle County, the employment does not violate the Ethics Code. The employee may pursue this employment as long as the lack of nexus with the County continues. The employee is advised to make his supervisor aware that he has secured outside employment.

**ADVISORY OPINION 07-08, June 13, 2007**

The exchange between the County and the company does not involve a "gift" as defined in the Ethics Code but the request involves an unprecedented type of

exchange between a vendor and the County. At this early contract proposal stage, the Commission finds that the actual and suggested restrictions for advertising on the public access cable television channel mitigate against a finding of an appearance of impropriety. However, since the channel is not yet in operation, the Commission cannot actually predict the manner in which public perception will be impacted and warns that it may revise its finding once the channel is broadcasting and the restrictions enforced.

**ADVISORY OPINION 07-09, June 13, 2007**

The attorney may pursue outside employment if the outside legal activity has no nexus with the County, but the attorney must make the County Attorney aware of each specific representation so that matters pending before the law department, about which she may be unaware, may be reviewed for conflicting representation, disclosure of confidentiality, or appearance of impropriety purposes. Since the law department represents the whole of County government, the attorney may not represent clients who have other business presented to or which is pending before the County in any unrelated matter. The employee must be careful not use confidential information obtained in County employment for the benefit of her private clients. In addition, the attorney may be required to conform to more stringent rules imposed by the Delaware Supreme Court on practicing attorneys.

**ADVISORY OPINION 07-10, July 11, 2007**

The Commission believes that an exception to the Code gift rules is appropriate in this unique circumstance. The occasion for the gift will not recur before the employee's pending retirement and the acceptance of the gift will not affect the supervisor's integrity, competence or impartiality in the exercise of her County duties. Common sense supports the supervisor's proposal to permit acceptance and donation of the gift to a charity in the employee's name in order to avoid a repetition of the workplace disruption resulting from the employee's bizarre past conduct.

**ADVISORY OPINION 07-11, August 8, 2007**

1) An individual Pension board trustee may meet with a Pension Board manager or consultant on matters unrelated to the business of the Pension Board as long as circumstances surrounding a meeting would not lead the reasonable observer to conclude that prohibited topics concerning Pension Board business would inevitably be addressed.

2) If the costs of transportation, subsistence and/or attendance at conferences or educational seminars sponsored by a vendor/consultant are wholly paid for by the County, there is no implication of the Code's gift laws. If the cost of transportation, subsistence and/or attendance is tendered as a gift from the conference sponsor, the specific surrounding circumstances must be carefully considered by the Commission in order to prevent an appearance of preferential decision making or other impropriety.

3) If the attendance at meetings with business associates involves close association or joint endeavors with consultants/professionals who have or will attempt to have a relationship with the County, the question is governed by the recusal rule which prohibits the Board member from participating in any decisions regarding the retention or compensation of consultants/professionals for the County board.

**ADVISORY OPINION 07-12, October 10, 2007**

Under circumstances in which a conflict of interest or other improper appearance may be present, Council President may sponsor land use legislation pursuant to the mandatory language of Council Rule 3.1.2 but must recuse himself or herself from any private or public discussion of the measure and may not vote unless he or she invokes the provisions of New Castle County Code Section 2.03.103 (A)(2).

**2008**

**ADVISORY OPINION 08-01, February 13, 2008**

The employee would violate the gift provisions of the Code of Ethics and create an appearance of impropriety if she accepted a monetary gift from a non-profit which does business with the County for activities which were intertwined with and indivisible from the duties for which she received payment from the County.

**ADVISORY OPINION 08-02, June 11, 2008**

The Ethics Code expressly permits an employee to accept the reasonable costs of training offered by a governmental entity as long as the employee has the approval of his or her department General Manager, agency head, or elected office holder.

**ADVISORY OPINION 08-03, July 9, 2008**

Assuming no pecuniary interest, an elected official may communicate for review and comment with an industry group impacted by proposed legislation without violating the New Castle County Code of Ethics.

**2009**

**ADVISORY OPINION 09-01, January 14, 2009**

If an elected official or his or her family do not have any interest in the substance of proposed legislation to a greater degree than the general public or a subclass consisting of an industry, occupation or other group which includes them, no evidence of bad faith, corruption, or improper personal interest arises just because the official consulted with selected constituents about legislation or took a position on that matter. If an official could be considered to have such a private interest different from the general public or a subclass of an occupation or industry, but the matter is part of his non-delegable duties and he believes his participation in the matter is in the public interest, he may act provided he follows the public notice provisions of Section 2.03.103(A)(2).

**ADVISORY OPINION 09-02, April 8, 2009**

The committee described in the request is not a County office, board, commission or similar entity and, therefore, the Chairperson of the committee is not a County official as defined in the New Castle County Ethics Code. The Ethics Commission is without authority to offer guidance on this request.

**ADVISORY OPINION 09-03, May 13, 2009**

The Commission accords nominees, like County officials, a presumption of good faith. Persons confirmed for a position on the Ethics Commission are circumscribed by the numerous confidentiality rules stated in the New Castle County Code. In the absence of concrete facts causing a reasonable person to conclude that a nominee would violate those rules, a Council member may forward the name of a business associate for, and, if confirmed, the nominee may accept a position on the Ethics Commission.

**ADVISORY OPINION 09-04, May 13, 2009**

The official may not provide access to the employees of his agency for the benefit of the private business.

**ADVISORY OPINION 09-05, June 10, 2009**

The official must recuse himself from all of the board's discussions, negotiations, votes, or contract formation with the County or its agents. Unless the official recuses himself from all matters relating to the non-profit's business with the County, he will violate the Code's prohibitions on representing private entities and on creating an appearance of impropriety. Since he has only non-discretionary involvement with the finalized non-profit contract, he is not required to recuse himself in his County function but may choose to do so.

**ADVISORY OPINION 09-06, June 10, 2009**

The Ethics Commission does not have jurisdiction to decide whether advertising on the County's website or on its other assets is in the public interest and must accept the Executive's or the Council's conclusion on that question. However, the conduct of officials or employees charged with implementing a decision to make such advertising available is subject to the prohibitions enacted in the Ethics Code, such as those against endorsing the interests of a private entity, creating an appearance of improper favoritism, or degrading the County's image and credibility. Therefore, acceptable use policies on the source, type, form and content of such advertising must be formulated by the Administration or Council in order to avoid violation of the Code. Once those restrictions are drafted, the Commission can review the policies and provide guidance in accord with the Ethics Code.

**ADVISORY OPINION 09-07, July 8, 2009**

A former employee recently left a supervisory position as a building inspector in the Land Use Department. He has asked whether Code section 2.03.103D, the post-employment prohibition, limits his area of employment. The Commission is unable to



provide a response to this request because it lacks specificity as to the nature of the job duties at issue.

**ADVISORY OPINION 09-08, September 9, 2009**

The subject of a complaint does not have authority to enforce the prohibition on disclosure of information deemed confidential by the Ethics Commission. Neither the Ethics Code nor the Commission rules prohibit a person who has no communicative connection with the Commission and to whom a subject voluntarily discloses confidential information from revealing that information. When the subject discloses confidential information which negatively affects a party who has a communicative connection with the Commission, considerations of fairness mitigate against imposing sanctions regarding a response from that party as long as the reply includes only limited and relevant confidential information.

**2010**

**ADVISORY OPINION 10-01, February 17, 2010**

The requesting officials may use County resources to send the introductory letters and attachments which are non-partisan in nature and contain information deemed helpful to persons in their districts.

**ADVISORY OPINION 10-02, February 17, 2010**

An official may not authorize or permit the placement of a link on a County resource which even indirectly enables or solicits political contributions or partisan activity.

**ADVISORY OPINION 10-03, February 17, 2010**

An employee does not have to resign in order to run for County office if the employee is able to fully comply with the duties and obligations of his County position and completely segregates all campaign activities from his County employment.

**ADVISORY OPINION 10-04, April 14, 2010**

The requesting official would not violate the Ethics Code if he uses County resources to send an introductory letter which is non-partisan in nature and contains only the name of the office holder, identification of the office and contact information for the office holder. The reasonable voter would not interpret the letter to imply that the official's representation was contingent upon voter registration.

**ADVISORY OPINION 10-05, April 14, 2010**

The Code requires that the spouse's profits from her business' activity be imputed to the official. The ordinance in question affects the spouse's business in manner different from the general public or the subclass cited in the ordinance. Therefore, action by the official on the ordinance would constitute a conflict of interest. When such a conflict of interest exists, an official can avoid a violation of the Ethics Code by taking either of two courses of conduct: complete and total recusal from any County matters associated with the spouse's business and abstention from vote or making

full compliance with the disclosure provisions recited in subsection (2) of Section 2.03.103(A).

**ADVISORY OPINION 10-06, May 12, 2010**

Since the function of the Board of this non-profit is to oversee activity which is conducted under extensive and continuous regulation by the employee's County department, the employee may not assume a seat on the Board without violating the Ethics Code provision against representation of a private entity before his department. Additionally, assumption of a leadership role in an organization extensively regulated by his department would create an appearance of partiality in decisions made by that department concerning the non-profit.

**ADVISORY OPINION 10-08, October 13, 2010**

The Ethics Code would be violated if the employee accepted the gift of salvage from an entity he regulates. Since the employee's knowledge of the existence of the salvage items stems from his position in the Land Use Department and he is in a position of direct regulatory authority over the owner of the bricks, acceptance of any gift would create an appearance that its receipt would impair the employee's judgment. Acceptance of the salvage also would violate his Department's policy on gifts.

**ADVISORY OPINION 10-09, November 10, 2010**

In the limited regard of real property in which an employee resides, the Ethics Code would not be violated if the employee represents himself or herself in the Land Use Department review process, as long as the employee uses no Department resources to advance that appeal. However, both the Ethics Code and Department policy prohibit any Land Use employee from representing or assisting any other person during any procedure before that Department, including the assessment review process.

**ADVISORY OPINION 10-10, November 10, 2010**

The Ethics Code gift rules permit agents or representatives of County Council to accept gifts made to the people of New Castle County as long as acceptance of the gift does not create an appearance of expectation or favoritism for the donor and the gift is recorded in the public gift log maintained by Council.

**ADVISORY OPINION 10-11, November 10, 2010**

The employee may serve on the nonprofit Board as long as he completely recuses from any involvement in issues regarding County grants, recommendations directly to his County department, or his department's recommendations to or from the Board or members of the organization the Board represents. The Board's purpose is limited to making advisory operational recommendations regarding a division in the requester's department, but those recommendations are not made to the department itself. The employee's individual County authority does not extend to either involvement with

grants for the institutions or responsibility for the administrative function of the division in question.

## **2011**

### **ADVISORY OPINION 11-01, March 9, 2011**

Since the product of the advisory board in question does not impact the function of the Land Use Department except in a speculative and tangential manner, the nominee's holding of a State regulatory position would not create an appearance of impropriety. The nominee may serve on the Board as long as he completely recuses from any involvement in planning, policy or issues which potentially could affect his State authority or his State department. If he recuses, he must notice his fellow board members and the public the reasons therefore. This opinion does not reach the question of whether service on the County advisory board violates some interpretation of the State of Delaware Code of Conduct for its employees.

### **ADVISORY OPINION 11-02, April 13, 2011**

An official may perform a non-delegable ministerial action in relation to a matter in which the official has a probable conflict or fears creation of an improper appearance as long as the official puts the conflict or improper appearance on the public record before performing the ministerial act. Performing a purely ministerial act after publicly voicing a personal belief that such an act would create an improper appearance does not violate the ethics code.

### **ADVISORY OPINION 11-03, June 10, 2011**

The official may not accept the employment and, if the official decides to volunteer as an instructor without pay, the official must recuse from any matter coming before the Board which involves a current or former student. Acceptance of the proposed employment would create the appearance that the official's Board's impartiality is compromised and that the official is using the status of the County position for private gain.

### **ADVISORY OPINION 11-04, July 13, 2011**

The officials may vote because their involvement in the state process is part of their official duties and they do not have a personal interest in the matter greater than that of the general public in their representative districts.

### **ADVISORY OPINION 11-05, August 17, 2011**

An appearance of impropriety would be created and the Ethics Code violated if the official remains on the board of the non-profit once the contract with the County is signed.

### **ADVISORY OPINION 11-06, August 17, 2011**

The Ethics Code conduct rule would be violated if the employee accepts the gift of the all-expense paid trip.

## 2012

### **ADVISORY OPINION 11-07, January 11, 2012**

The employee owning the non-conflicting outside business may seek financial services from financial institutions that have or currently contract with, or in the future may bid for financial services business with New Castle County, as long as he avoids using his senior status with his County department to secure financial services for the outside business. He is also prohibited from entering into contracts with those institutions which create the appearance that he is using his County employment to secure unwarranted advancement for that business. He must disclose the fact and extent of his relationship to the selected institutions to his superiors and completely recuse from the exercise of County authority in relation to the institutions he selects and to his competitors.

### **ADVISORY OPINION 12-02, March 14, 2012**

An improper appearance of favoritism would be created if the official selected one potential vendor over similarly situated competitors. The official may invite relevant vendors as presenters but may not exclude similarly situated competitors when a reasonable business opportunity arises from the opportunity to present.

### **ADVISORY OPINION 12-03, March 14, 2012**

In order to avoid a violation of the Ethics Code, the requester must exclude even ordinary maintenance of the structures from his contracts and not perform any services for the private entities related to the structures inspected by his Department.

### **ADVISORY OPINION 12-04, April 11, 2012**

The Administration may accept the services and funding from the nonprofit for the benefit of the public since the nonprofit does not have a business or regulatory relationship with the County and the gifts would not create an appearance of impropriety in the mind of the reasonable citizen.

### **ADVISORY OPINION 12-05, June 13, 2012**

In order to avoid a violation of the Ethics Code, the requester may not become an employee of the outside business since a portion of its work is inspected by his Department.

### **ADVISORY OPINION 12-06, August 8, 2012**

The requester's recusal is sufficient to dispel an appearance of impropriety: he consulted the Ethics Commission regarding his recusal, notified his superiors of his recusal, delegated his office's investigative duties to an independent contractor, relinquished his authority to judge the competence of the investigation and determine its outcome to another County authority, notified the entity investigated about his recusal, and requested this Advisory Opinion as to sufficiency. He retained only the limited authority to provide procedural guidance as there is no other person in his office qualified to do so. A reasonable member of the public, cognizant of these facts,

would not conclude that the requester's ability to carry out his official duties with integrity, impartiality and competence is impaired.

**ADVISORY OPINION 12-07, September 12, 2012**

The child of the requester may accept the scholarship since it is based upon the student's own record of accomplishment and not awarded because of the employment status of the parent. However, even though the requester is the only Department employee qualified to issue permits required by the members of the union and in order to avoid creating an appearance of impropriety, he must recuse himself from interaction with members of that union who apply for permits, or, alternatively, his Department must create an immediate and transparent procedure to prevent Code violations from arising that is approved by the Ethics Commission and which provides oversight of all official interactions between the requester and members of that union.

**ADVISORY OPINION 12-08, November 14, 2012**

The administrator may offer employment to the intern as long as the administrator creates an impermeable barrier between the intern's work in the County office and that in the private business.

**2013**

**ADVISORY OPINION 13-01, January 9, 2013**

In order to avoid creating an appearance of impropriety, the requester may not provide guidance and must recuse himself by informing both his superiors and supervisees that he is not to be consulted for advice regarding the private business and must make a deliberate effort to avoid informing himself about those issues.

**ADVISORY OPINION 13-02, January 9, 2013**

In order to avoid creating an appearance of impropriety, the requester may serve as an advisor but must recuse himself from involvement in any matter concerning changes in the valuation policy of the County.

**ADVISORY OPINION 13-03, February 21, 2013**

A County Board member may continue to serve as president of her neighborhood maintenance association since that entity does not appear before nor advocate on issues that come before her County Board. However, if the association should ever come before the Board or advocate before the County on issues affecting the Board, she must recuse herself from involvement as a Board member and as an association official.

**ADVISORY OPINION 13-04, April 10, 2013**

Through election, appointment, or employment, all County officials and employees share the same fiduciary duty to the citizens of New Castle County. Officials and employees are presumed to act with integrity and good faith unless circumstances

show otherwise. The requester may cast a vote on matters previously considered by a County Board on which a business associate serves unless there is evidence of conflict of interest or evidence creating an improper appearance on the part of the requester.

**ADVISORY OPINION 13-05, May 8, 2013**

Unless the requester is relieved of the secondary service to the official who represents the district where the nonprofit functions, the requester must resign from the leadership position on the nonprofit.

**ADVISORY OPINION 13-06, June 12, 2013**

The employee must decline the gift from the recipient of County services.

**ADVISORY OPINION 13-07, June 12, 2013**

The Ordinance is not required to include a comprehensive solicitation policy because Code Section 2.03.104 J.1. and prior Commission opinions prescribe the parameters of any solicitation by County officials or employees from entities that do business with or are regulated by the County.

**ADVISORY OPINION 13-08, September 11, 2013**

The requester may seek nomination to a leadership position in an organization that advocates before and is represented by his County advisory board so long as he recuses himself to avoid creating an appearance of partiality when he personally represents that organization before his board.

**ADVISORY OPINION 13-09, September 11, 2013**

In order to prevent the creation of an improper appearance in violation of the Ethics Code, the requester may not accept the leadership role and she must discontinue her active membership in her civic association.

**ADVISORY OPINION 13-10, September 11, 2013**

The requester may not provide grant writing services to any entity if her department is potentially eligible for the same grant. The requester is further prohibited from providing services to any entity which is affiliated with the County, seeks or does business with the County, or is regulated by or reasonably foreseen to be regulated by the County in the next three years. The requester's department's administrative prohibition regarding outside employment with the specific County affiliated nonprofit is in accord with the restrictions imposed by the Code and this opinion.

**2014**

**ADVISORY OPINION 14-01, February 12, 2014**

The County Executive or his designee may permit the sale of fundraiser tickets to employees of the department as long as the office procedures for such sales are

non-coercive and do not contravene the prohibition on solicitation by superiors of subordinates or employees in a lower pay grade. The department's staff may solicit members of the public who have a professional relationship with the department as long as they are not current or foreseeable vendors or persons in businesses regulated by the County.

**ADVISORY OPINION 14-02, April 9, 2014**

The employee's service on the state commission does not create a conflict of interest or improper appearance. The employee's state duties do not affect the exercise of County authority and are not similar to and do not duplicate the employee's County function. The administrative decision to pay the employee her County salary while she attends the state meetings is not within the authority of the Ethics Commission as, in this circumstance, it does not create an improper appearance.

**ADVISORY OPINION 14-03, June 23, 2014**

In order to avoid violating the Ethics Code, it will be necessary for the requester to advise her superiors of her employment of the County employee's adult child and to have the superiors delegate her supervisory authority related to the County employee in the areas of discipline and compensation to another supervisor for the duration of the temporary employment.

**ADVISORY OPINION 14-05, September 10, 2014**

The Ethics Code does not prohibit an otherwise lawful selection of a vendor simply because the vendor employs an individual who volunteers to serve on a committee which addresses matters unrelated to the subject of the vendor contract. If a potential conflict or improper appearance relating to the outside vendor or its affiliates arises or is recognized, the Ethics Code in Section 2.03.102 requires that "an [appointed] official or employee must end direct or indirect participation, advice, input, direction, recommendation, or discussion, as well as refraining from vote."

**ADVISORY OPINION 14-06, November 12, 2014**

The provision in the solicitation letter that provides businesses which donate \$250.00 or more for County events the right to set up an information table to advertise or sell services at the events would violate the Ethics Code requirement of impartiality unless the County advertises that same opportunity to County businesses which do not donate. Additionally, the Department conducting the event may not allow its employees to accept solicited donations from any entity which it directly serves. Such donations must be accepted by employees associated with another department or outside agency.

**ADVISORY OPINION 14-07, November 12, 2014**

A solicitation by the sponsoring County Department, conducted in accord with the information supplied to the Commission, would not violate the Ethics Code.

## **2015**

### **ADVISORY OPINION 15-02, February 11, 2015**

The County may not become a corporate sponsor of a non-profit entity in order to provide employees with a reduced rate for services from the non-profit because similarly situated businesses have not been afforded the opportunity to make presentations to the County for the use of their facilities.

### **ADVISORY OPINION 15-03, March 11, 2015**

An appointed official may serve as a member of a non-profit board which has received occasional federal funds administered by the official's department if the official reveals the potential areas of improper appearance to both the non-profit and the appropriate County authority and recuses from any activities which may cause the appearance of conflict, including policy making, promotion, or other activities concerning the non-profit's relationship with the County.

### **ADVISORY OPINION 15-05, June 10, 2015**

The Commission issues advisory opinions on questions involving proposed conduct, not past conduct. Further, the Commission will not issue an advisory opinion based on mere speculation as doing so would not serve the public good nor would it advance the Ethics Code.

### **ADVISORY OPINION 15-06, June 10, 2015**

The New Castle County Delaware Employees Federal Credit Union may not use the New Castle County government email system to send email blasts to County employees to disseminate information about its services and to increase membership in the Credit Union.

### **ADVISORY OPINION 15-08, July 8, 2015**

A trustee of the New Castle County Employees Retirement System Board of Trustees may not accept a gift of a conference registration fee waiver and travel stipend for a conference that is sponsored and offered by for-profit, private companies which sell the kinds of professional services to public funds representatives that may be procured by the New Castle County Employees Retirement System Board of Trustees.

### **ADVISORY OPINION 15-09, August 12, 2015**

A manager in the New Castle County Department of Community Services may serve on the uncompensated, volunteer board of directors of a nonprofit organization which has previously applied, and may apply in the future, for grant funds from New Castle



County, as long as she recuses herself while serving on the board of directors from participation in all County matters that involve the nonprofit organization.

**ADVISORY OPINION 15-12, November 16, 2015**

An elected County official may serve on the advisory board of a local nonprofit heritage association, as long as he recuses himself from participation in all County matters that involve the nonprofit organization and informs the public and County employees and officials of his involvement with the nonprofit association.

**2016**

**ADVISORY OPINION 16-01, February 10, 2016**

A person who is actively seeking employment with New Castle County may do so at the time when such person may be appointed to a County advisory board, but may not serve in such capacity if and when such person secures employment with the County, through direct hire or by contract or any other form of employment with the County.

**ADVISORY OPINION 16-02, April 13, 2016**

A New Castle County Department of Public Safety manager may accept the gift of the cost of flight, lodging, meals, and tuition for a HazMat training program for the management of response to railway accidents from a private railroad company, so long as the gift is recorded in the departmental gift log as required by the Ethics Code.

**ADVISORY OPINION 16-04, December 7, 2016**

An elected County official, while holding office, may receive remuneration from a professional limited liability corporation for work performed before the official took office, provided that (1) such professional limited liability corporation does not do business with New Castle County and the remuneration received is not, in any way, related to business transacted with, or on behalf of, New Castle County; (2) the requester does not perform any services for payment for the professional limited liability corporation once he has taken office; and (3) all appropriate and relevant information on this matter is disclosed in any Statements of Financial Interests filed with this Commission.

**ADVISORY OPINION 16-05, December 7, 2016**

A newly-elected County official, who, during the timeframe between his election and his taking the oath of office, has been in the process of reducing his role and ownership level in his sole member limited liability corporation, may take office while remaining the sole owner of such private enterprise, which (a) is registered under the laws of the country of Kenya, Africa; (b) has its sole American office in Wilmington, Delaware; and (c) which does not and will not do any business with New Castle County, providing the

following conditions are met: (a) the Company does not do business with New Castle County; (b) all appropriate and relevant information on this matter is disclosed in any Statements of Financial Interests filed with this Commission and other documents required by the Code; (c) if a conflict or potential conflict arises with respect to the Company and the requester's County duties and responsibilities, the requester must follow the recusal procedures set forth in 2.03.103.A; and (d) the requester must establish procedures for handling Company business in a manner that ensures that County time and resources are not used for the benefit of the Company.

## **2017**

### **ADVISORY OPINION, 17-01, March 8, 2017**

A County official may continue her service on the board of directors of a bank which does not do business with County government and for which the County official is paid a flat fee for monthly meeting attendance, so long as the conflict of interest procedure in the Code are observed at all times, including that she formally refuses herself while serving on the board from participation in all matters which come before the County that involve the bank and all matters which come before the bank which involve the County.

### **ADVISORY OPINION 17-03, April 18, 2017**

A Community Services Department employee may assist in the creation of, and serve on, the local civic umbrella group, as long as she refuses herself from participation in all County matters that involve that group, group members, and as long as the County employee informs the public and County officials and employees of her involvement with the group before any interaction between the group and any County officials or employees. The Ethics Commission reserves the right to re-evaluate this advisory opinion request once the group is established with bylaws and other governing documents.

### **ADVISORY OPINION 17-04, June 14, 2017**

A County official asked the Ethics Commission whether a long-standing County vendor may provide free training on its products, and lunch, to County employees who are charged with administration and maintenance of the products purchased and used by the County from this vendor. The Ethics Code clearly disfavor the acceptance of gifts of any kind by County officials and employees. The lunch offered by the vendor is a gift pursuant to the Code. The free training by the vendor is also a gift under the Code, unless the County paid for such training as part of its contract with the vendor. Both the lunch and the training, however, under the circumstances presented here, are permissible gifts under the Code, and acceptance of these gifts must be timely recorded in the department's gift log.

**ADVISORY OPINION 17-06, June 14, 2017**

A Land Use department employee may serve as an unpaid, volunteer member of a city planning commission so long as the County employee exercises the refusal procedures required by the Ethics Code so that any conflicts of interest or any appearance of a conflict of interest will be prevented or, at least, substantially minimized. The employee is cautioned against the use as a member of the city planning commission of any knowledge or contacts gained through County employment for the benefit of any other organization than County government, in violation of the Ethics Code.

**ADVISORY OPINION 17-08, November 14, 2017**

The Ethics Code discourages the acceptance of gifts of any kind by County officials and employees. Covering the travel expenses of two County employees for three days is a gift under the Ethics Code. Under these unique circumstances, however, where the purpose of the gift by the vendor is to prevent substantial additional costs to the County and the vendor under a contract with a difficult fulfillment history, the Commission finds that this is a one-time permissible gift, and which must be recorded in the appropriate departmental gift logs in a timely manner.

**ADVISORY OPINION 17-09, January 10, 2018**

A County department may award discretionary funds using a process which includes an application process and a thorough review of such application by a small internal committee within the department, with the final decision resting with the department head, so long as actual or potential conflicts of interest are avoided through the recusal process, per the Code. As this opinion is limited to the specific detail presented in this opinion, the department is encouraged to request an advisory opinion for any future applications which implicate the Ethics Code due to a conflict of interest, the appearance of impropriety, or for any other Ethics Code issue which may attach.

**2018**

**ADVISORY OPINION 18-01, February 22, 2018**

The purchase of this raffle ticket is a purchase for a chance to win a potential non-cash prize, and such a purchase is likened to a donation made by the requester to the non-profit organization. If the requester wins the non-cash prize, the requestor paid the price set by the non-profit for the chance to win that prize. Because the requester, in effect, paid for the prize, winning the prize would not be a gift to the requester from the non-profit pursuant to the Ethics Code, and, as such, he would not be required to log it in the departmental gift log. Additionally, the format of the raffle is such that the ticket was not sold to the requestor in a manner which implicates the application of the Ethics

Code, as it was not intended to influence the requester's vote or official action. Additionally, the Commission finds that a reasonable person would not perceive the purchase by the requester of the raffle ticket for a non-cash prize as something improper or something which would impair the requester's judgment in his official duties.

**ADVISORY OPINION 18-02, May 9, 2018**

A County official, by virtue of his position in County government, is required by State law to serve as a member on the board of directors of a tax-exempt, nonprofit corporation, which was created by State legislation. A local municipality has decided to pursue a transfer of jurisdiction over some real property which, if successful, will benefit the municipality and the corporation on which the County official is a board member. It may also benefit the County. The County official, also by virtue of his County position and State law, is required to vote yes or no on the property jurisdiction transfer. If the County official votes yes, the property transfer may become a reality. If he votes no, the property transfer fails. The County official has asked the Ethics Commission for guidance regarding the application of the Ethics Code to his handling of this matter. The Commission advised that the County official will not be in violation of the prohibitions against conflicts of interest and appearances of conflicts set forth in the Ethics Code when he performs his statutory duty to approve or disapprove a proposed transfer of jurisdiction over real property to a nearby local municipality, even though his decision may make possible some development projects to be undertaken by the corporation, created by State law for the benefit of citizens in northern Delaware, for which the County official is statutorily required to serve on its board of directors, so long as the County official's decision on the land transfer reflects his priority of duty to County government and he provides full and complete information to the public regarding his decision-making process on the land transfer, in an effort to avoid a misperception on the part of the public that a conflict exists.

**ADVISORY OPINION 18-02, May 9, 2018**

The Commission was asked whether an Ethics Code violation will occur if a New Castle County division may partner with non-County entities, such as a non-profit organization, a civic association, and an online advertiser, in efforts of the non-County entities to bring community awareness to, and generate funds for, a community fund-raising event, where the proceeds will be used to fund one or more youth events held later in the year involving the County division and the non-County entities. The Commission advised that, under the facts presented here and with the observation of certain limiting factors, the Ethics Code will not be violated. In the matter presented, the upcoming fund-raising event to benefit area youth will be organized, advertised, and run by non-County entities. The involvement of the County division is primarily limited to its participation in the actual event and distribution of information about that fund-raiser,

including, some word-of-mouth promotion on the part of a number of County employees. Neither the County name, symbols, etc., nor those of the County division, will be used in the advertising of this fund-raiser. Fund-raising by County officials or employees, in this instance, will not include solicitation of members of the public. And where solicitation is performed internally within the County government, supervisors will not solicit from subordinates.

**ADVISORY OPINION 18-04, August 8, 2018**

An elected official asked the Ethics Commission for guidance on how to disseminate information about County government to the general public through social media without violating the Ethics Code, including whether the governmental symbols may be used. The Commission advised that the elected official may use social media to disseminate information about County government to the general public without violating the Ethics Code so long as the platforms are not used in a manner which may lessen the confidence of the public in their County government including, but not limited to, any act which may comprise a violation of the Ethics Code such as conflicts of interest, personal financial gain, or the dissemination of confidential information learned through an official capacity. Additionally, such platforms may not be used for campaign purposes, and any elected official must make it very clear to the public that a platform used for the dissemination of general information is separate and apart from a different platform used for campaign purposes. The question as to the use of governmental symbols and the like on the social media platforms is, by itself, not an Ethics Code issue and should be addressed to the appropriate legal counsel.

**ADVISORY OPINION 18-05, July 11, 2018**

The Commission was asked whether it would be a violation for a County official to accept the gift of costs of attendance and travel to an international conference being held in China and focusing on trade and development opportunities, where the conference is organized by an independent, non-profit foundation which exists for the pursuit of global well-being through the development of a positive relationship between the United States and China through the in-person exchange of knowledge and information. The Commission concluded that the County official, under the circumstances presented here, may accept the gift of the cost of attendance and travel to an international conference being held in China, so long as such gift is recorded in the departmental gift log as required by the Ethics Code. The Ethics Code provides that a gift that covers training expenses, including reasonable transportation/lodging/subsistence costs, may be accepted by a County official or employee when such payment or reimbursement of such expenses is from a governmental body or associations of governmental bodies. While the conference in question is run by an independent, non-profit foundation organization, such an

organization is not attempting to obtain business from, or provide paid service to, the County or the County attendee. This approval by the Commission does not extend to a delegee of the County official; he may not send someone in his place on this trip.

**ADVISORY OPINION 18-06, August 8, 2018**

The Commission was asked whether the Requester would be in violation of the Ethics Code if it placed the name of a former County employee on a re-employment eligibility list for potential future County employment when such former County employee resigned from County employment a couple of months before, and, thereafter, requested and received a distribution of funds which had been held in his deferred compensation account. The Commission advised that, under the scenario presented to the Commission by the Requester, the question posed is outside of the jurisdiction of the Ethics Commission inasmuch as an answer to the question requires a legal interpretation of laws covering distributions of earned deferred compensation, as well as legal interpretations of sections of the County Merit Code. The Commission does not have the authority to issue an advisory opinion on a matter which turns on an interpretation of the County Merit Code, and the application of that interpretation to the particular facts as they develop within the department of the Requester. The Ethics Commission further finds that the issue presented by the Requester does not call into question an interpretation of the Ethics Code.

**ADVISORY OPINION 18-08, August 8, 2018**

The Commission advised that a County employee may accept the gift of the cost of the symposium hotel and airfare from the marketers of the DNA tracking system, so long as such gift is recorded in the departmental gift log as required by the Ethics Code, and so long as this is a one-time occurrence. This approval is limited to this situation only and should not be interpreted to apply to any other circumstance. Should the Department determine that any future attendance at any symposium or conference regarding the use of the cutting-edge system is appropriate and necessary, the Department should plan accordingly and provide for all such expenses related to attendance at this symposium in its budget. Attendance at the symposium will give the County employee an opportunity to receive and exchange highly valuable information for public safety purposes which could not be obtained without attendance at the symposium. This benefit outweighs any potential adverse perception on the part of the public resulting from the acceptance of this comparatively modest gift. While the presentation of a poster at the symposium by the County employee about the cutting-edge technology benefits the marketers of the machine, it likewise benefits the Department and the County.

**ADVISORY OPINION 18-10, August 8, 2018**

The Commission was asked whether a County Council employee may operate his own part-time photography business outside of his working hours without violating the Ethics Code. The Commission concluded that so long as the employee carefully observes Ethics Code issues which relate to outside employment and discussed herein, the employee will not violate the Ethics Code by operating a part-time photography business outside of his County working hours. In rendering its opinion, however, the Commission stated that the Requester must remain aware of the fact that his County job requires his interaction with many people who work for the County and with many people who do not. The citizens of New Castle County are oftentimes well-acquainted with one another and the Requester must take all steps necessary and/or advisable to ensure that his County work does not in any way overlap with his outside business. Failure to secure and an ability to readily prove such a separation between his County work and his photography business could result in a violation of the Ethics Code, and this opinion may not, under such circumstances, be used as a defense to an Ethics Code complaint filed on those or other appropriate grounds. If the Requester proceeds with his part-time photography business, he is encouraged to consult with the Ethics Commission in the event that issues arise which may implicate the application of the Ethics Code to the activity.

**ADVISORY OPINION 18-11, November 14, 2018;**

**Addendum issued January 9, 2019**

The Commission was asked whether a proposed Administrative policy to permit the County to solicit donations in the form of payment to the County from donors to hang banners in certain County parks met the requirements of the Ethics Code. Initially, the Commission found that it could not approve the proposed policy in its submitted format because it did not contain a statement of a public purpose which informed the public of the basis for the adoption of the policy and how the policy would benefit the public. The Commission advised that the requester could submit a revised policy for Commission review, which the requester thereafter submitted. The Commission reviewed the revised policy and new documentation. The Commission advised in its opinion addendum, as it also cautioned in its original opinion, that administration and execution of this policy lends itself to opportunities for abuse and/or favoritism, public misperception, and situations where good intentions may easily go awry. Nevertheless, the Commission advised that the policy as revised, and the sample advertisement language submitted with the revised policy, comply with the Ethics Code, as submitted.

## 2019

**Advisory Opinion 19-01, June 12, 2019:** The Commission determined that a County employee who is a plan examiner in the Land Use Department, and who is also a registered architect in Delaware, may take on private contractual employment as an architect for clients outside of New Castle County without violating the Ethics Code if they very carefully observe Ethics Code issues which relate to outside employment, including, but not limited to, taking on contracts with persons or entities which are not regulated or serviced by New Castle County; conducting any such private work outside of County working hours only; not using any information gained through employment with the County; and keeping his supervisors informed of any and all such outside work, to prevent the creation of a situation which is in violation of the Ethics Code.

**Advisory Opinion 19-02, September 28, 2019:** In this advisory opinion, the Commission decided that an elected County official may enter into a contract with an educational institution to receive payment for teaching a 4-part seminar series on subject matter which is related to his County position without violating the Ethics Code so long as the County official carefully observes Ethics Code provisions, and avoids Ethics Code issues, including, but not limited to, using any County resources for this contractual work; representation of another's interests before County government; maintaining the confidentiality of non-public information known to him by virtue of his County office; and treating members of the public who do business with his office in an impartial manner regardless of their involvement with the educational institution involved.

**Advisory Opinion 19-04, January 16, 2020:** The Commission determined that the County, through the Public Works Department, may promote the County's environmental awareness, its involvement in environmental matters on behalf of the citizens of the County, and its participation in programs which encourage New Castle County students to pursue careers in the environmental fields, by becoming a sponsor and/or exhibitor at an annual youth environmental conference which was created by a nonprofit organization founded by someone who is currently holding New Castle County elective office without violating the Ethics Code so long as the decision is not influenced in any way by the elected official, so long as the elected official recuses from any matter involving the conference and the nonprofit organization which developed the conference, and so long as the funds paid by the County to the non-profit for the annual youth environmental conference are used in their entirety for that conference, only, and are not used by the non-profit for any other purpose. Due care must be exercised by every County official and employee involved to ensure that these conditions are met,



–  
and continue to be met, if the County continues to be involved with this conference or anything related to the nonprofit.

**Advisory Opinion 19-05:** The Commission decided that a Public Safety Department employee may serve as a public information spokesperson a public information officer for a regional association of first responders so long as the Public Safety Department employee is careful to exercises the recusal procedures required by the Ethics Code if any matter arises which presents a conflict or the appearance of a conflict, and so long as the Public Safety Department employee informs both his employer and his regional association of these Ethics Code requirements. The Ethics Commission recognizes the value of County officials and employees acting in volunteer capacities in community service entities and organizations. At the same time, however, the requestor is cautioned by the Commission against the use of any knowledge or contacts gained through his employment with New Castle County for the benefit of any other organization as such action would be in violation of the Ethics Code.

## **SYNOPSIS OF COMMISSION ORDERS FOLLOWING COMPLAINT INQUIRY OR INVESTIGATION**

### **2004**

#### **ORDER - COMPLAINT 03-02, June 25, 2004**

A Councilperson's sponsorship and/or vote on an ordinance that creates no personal or private benefit to the Councilperson, to a member of his family or a business with which he is associated does not create a conflict of interest or appearance of impropriety.

#### **ORDER - COMPLAINT 03-03, May 12, 2004**

An official did not have a conflict of interest or create an appearance of impropriety in making a County grant to an entity owned by a nonprofit corporation on whose board he was a member since neither he nor any member of his family nor a business with which he was associated had a financial interest in the corporation or the entity. The official was an inactive member of the board, did not participate in the management or operation of the corporation, did not have any personal, financial or other interest in the operation of the recipient, and the idea, as well as the entire funding for the grant, came from State authorities to whom the official gave public credit for the grant.

#### **ORDER - COMPLAINT 03-04, June 12, 2004**

The exchange of gifts of equal value with personal friends does not violate the Code of Ethics. The acceptance of group sponsored gifts from fellow employees on traditional ceremonial occasions where the value of the individual donation was

within an annual aggregate of \$75.00 and the donors were not pressured to make contributions do not violate the Code when the gifts were not intended, and the circumstances do not evidence, any intent to affect the conduct of the official in regard to the official's County duties.

**ORDER - COMPLAINT 04-02, March 24, 2004**

A contract in excess of \$500.00 made by a County official with the Department of Community Services for Section 8 housing without public bidding did not violate the Ethics Code because the County department was acting only as an agent of the federal government in executing publicly advertised contracts that did not involve County funds, the official was required to enter into a public, arm's length contract with standard terms dictated by the federal government, the subject of the contract was unrelated to the official's County position and duties, and the department which administers the contract is one over which the official has no authority and to which he does not report.

**ORDER - COMPLAINT 04-05, July 14, 2004**

A continuing contract for professional services, executed by the Administration with a contractor who subcontracts with a law firm in which a principal is a sibling of a senior administrative official who has oversight for the contract, would violate the appearance of impropriety section of the Ethics Code if it had not been formed with the specific authority of and continuing approval of County Council.

**ORDER – COMPLAINT 04-07, January 9, 2008**

The allegation that Ms. Freebery violated the appearance of impropriety provision of the Ethics Code by knowingly and intentionally accepting a gift/loan in excess of two million dollars from an individual who had a pending project subject to regulation by a County department under her supervision is substantiated. In light of the fact that Ms. Freebery is no longer in the service of New Castle County government, the penalty imposed for that violation is a letter of reprimand.

**ORDER – COMPLAINT 04-01, September 9, 2009**

The Commission received a complaint that the Chief Administrative Officer used County paid employees for partisan political purposes. A reasonable member of the public would believe the decision to use unclassified employees to support candidates Ms. Freebery and/or her superior favored was made to advance personal preferences and was not a fair and objective decision made in the interest of the public. Using County taxpayer's resources to advance partisan political goals undermines public confidence in the impartiality of government actions. Therefore, even in the absence (at the time of Ms. Freebery's conduct) of a specific County rule prohibiting the use of unclassified employees for partisan political purposes, Ms. Freebery's conduct created an appearance of impropriety.

## 2005

### ORDER – COMPLAINT 05-04, April 12, 2006

The Commission finds that the official's vote caused an appearance of impropriety and that in the future he must recuse himself when his spouse has a business association with a private beneficiary in a matter before him. The Commission finds that the official made an attempt to avoid an ethical violation and did not knowingly or willfully violate the Ethics Code. The Commission declines to issue any sanction.

### ORDER – COMPLAINT 05-03, January 9, 2008

The allegation that Ms. Freebery violated the financial disclosure requirements of the New Castle County Ethics Code by failing to provide 2001 and 2002 Statement of Financial Interests based on the best of her knowledge, information and belief is substantiated. The penalty imposed for that violation is a letter of reprimand.

## 2006

### ORDER - COMPLAINT 06-04, September 12, 2007

The Commission investigated, and now dismisses, the contention regarding the political contributions. The Commission finds that the unique surrounding circumstances regarding the land use matter – mandatory default sponsorship pursuant to a written rule, a substantively duplicate ordinance which had been previously reviewed by the Land Use Department, and an absence of evidence of contact with the proponents of the ordinance regarding the ordinance's subject matter prior to the vote -would not lead a reasonable person to believe that the subject created an appearance of unfairness or lessened public confidence in the impartiality of County government by sponsoring and voting on a land use measure shortly after accepting lawful campaign contributions from interested parties.

The Commission is without jurisdiction to investigate the complaints concerning the accuracy of the subject's financial reports to the State of Delaware and the subject's conduct in arranging a meeting to resolve pending County litigation. Claims about the accuracy of reports required to be filed with the state must be made to the appropriate state agency. As to the latter contention, the public record demonstrates that no factual basis for a conflict of interest or improper appearance exists in relation to the allegation regarding the County litigation meeting.

### ORDER – COMPLAINT 06-03, October 10, 2007

The Commission investigated, and now dismisses, the complaint that the supervisor retaliated against the employee. The Commission investigation showed no conflict of interest or impropriety in the supervisor's method of handling the employee's report of suspected misuse of federal funds and criminal complaints. The investigation also failed to substantiate the complaining employee's contention that he was retaliated

against in the terms and conditions of his job since the claimed impairments resulted from a general restructuring of the department's managerial authority or were the result of his own inability to control his workplace behavior.

**ORDER - COMPLAINT 06-05, October 10, 2007**

The Commission investigated and now dismisses the complaint against the board member. The investigation uncovered no evidence supporting the claimed exercise of improper influence or evidence of collusion between members of a regulatory board to affect the interests of third parties. Absent any issue of violation of the Ethics Code, the board member's participation in the questioning of a candidate after he had not been present at the interviews of other similar candidates was an administrative decision made by members of the committee and outside the jurisdiction of the Commission.

**2007**

**ORDER – COMPLAINT 07-03, March 12, 2008**

In light of the facts uncovered in the Commission investigation, the allegation that the subject violated the appearance of impropriety provisions of the New Castle County Ethics Code by sponsoring and voting on a rezoning ordinance after accepting lawful campaign contributions from interested parties is not substantiated. The complaint is dismissed.

**2008**

**ORDER – COMPLAINT 08-03, June 10, 2009**

The Commission received a complaint that a County official disclosed information deemed confidential by the Ethics Commission in violation of New Castle County Code Section 2.04.104J. The disclosed confidential information concerned positions taken by a fellow County official during non-public meetings of a County entity that were deemed confidential by the New Castle County Code. Following investigation, four members of the Commission were not able to come to unanimous agreement. Therefore, pursuant to Code section 2.04.101G, no action can be taken and the complaint must be dismissed.

**ORDER – COMPLAINT 08-01, June 19, 2009**

The complaint alleged that an email sent by the subject on June 11, 2008, to a group of 24 persons in or representing the real estate developer community, which contained the electronic signature of a relative's law firm, created the appearance that the subject's official decisions or actions, or those of body to which he was elected, were influenced by factors other than the merits of the matter before them. Following investigation, four members of the Commission were not able to come to unanimous agreement. Therefore, pursuant to Code section 2.04.101G, no action can be taken and the complaint must be dismissed.

**ORDER – COMPLAINT 08-02, November 9, 2009**

In light of the facts uncovered in the Commission investigation and hearing, the allegations that the subject used his County office for private advancement or gain in relation to the “Christmas list” and the 2007 emails are dismissed. The Commission finds by clear and convincing evidence that the subject created the appearance that he used his County office for private advancement or gain in relation to the activity regarding the preparation of fundraiser invitations.

**ORDER - COMPLAINT 08-02, December 10, 2009**

In light of the facts uncovered in the Commission investigation and hearing, the allegations that the subject used his County office for private advancement or gain in relation to the “Christmas list” and the 2007 emails are dismissed. The Commission finds by clear and convincing evidence that the subject created the appearance that he used his County office for private advancement or gain in relation to the activity regarding the preparation of fundraiser invitations.

**2009**

**ORDER – COMPLAINT 09-04, October 14, 2009**

The Commission received a complaint that a County official used his County status to secure income for his private business from a client that was opposed to a land use matter on which the official allegedly voted. The Commission investigation did not find clear and convincing evidence to support the allegation that the official used his County status for the benefit of an associated business and did not find any evidence to support the allegation of an improper vote. The complaint was dismissed.

**ORDER – COMPLAINT 09-02, January 13, 2010**

The evidence supporting the allegation that the subject used his official authority for personal benefit or unwarranted privilege or gain regarding the contractor referrals does not meet the standard of “clear and convincing” proof. Pursuant to the specific facts uncovered in this investigation, the allegation that the subject’s assignment of the complainant to the coworker’s project created an appearance of partiality is not substantiated. The complaint is dismissed.

**2010**

**ORDER – COMPLAINT 10-02, October 13, 2010**

The Commission finds by clear and convincing evidence that the official adversely affected the public confidence in his impartiality by presiding over a matter involving his wife’s business.

## **2011**

### **ORDER – COMPLAINT 11-01, July 13, 2011**

The Commission does not find any evidence to support the allegation that Official B violated the solicitation rule of the Ethics Code. The gifts reported by the subject, in themselves, did not create an improper appearance. In fact, the Commission agrees with the complainant, who told the investigator that he thought the gifts were in an amount that did not create an improper inference about the donors. The reasonable person would not believe the official's impartiality was impaired by acceptance of the gifts under the circumstances in this case. The gifts unquestionably benefitted the public, the donations were made transparent at the start of the public program, and Official B promptly recorded them in a publicly available gift log as required by the Code. The complaint is dismissed.

### **ORDER - COMPLAINT 11-05, September 14, 2011**

The Commission finds by clear and convincing evidence that the official adversely affected the public confidence in his impartiality by presiding over a matter in which he had a conflict. A letter of notification is imposed.

### **ORDER – COMPLAINT 11-02, October 12, 2011**

A reasonable person would not believe that, in this case, the type of gifts orally solicited for the benefit of the public were of an improper nature in themselves. However, the reasonable person reviewing the facts of this case would conclude that the failure of the official's agency to enact a clear written policy for solicitation as well as its lack of oversight of the subcommittee were the root causes of the violation of the written solicitation rule and ensuing creation of an appearance of impropriety. A reasonable person would also find that a contributing cause to the improper appearance was the late notice provided by the official to the fellow subcommittee member about the donor of the speaker's fee. The Commission finds by clear and convincing evidence that the official adversely affected the public confidence in his impartiality as a member a County agency by soliciting donations for a public purpose in the absence of a written solicitation to all appropriate donors. Since the official's conduct was not the primary cause of the violation, the Commission declines to impose a sanction on the official.

## **2013**

### **ORDER - COMPLAINT 13-05, September 11, 2013**

The complaint alleged that the employee coerced clients of his department to choose a particular vendor for services. The Commission investigated the complaint and found no probable cause to believe that a violation of the Ethics Code occurred and dismissed the complaint.

**ORDER - COMPLAINT 13-01, March 12, 2014**

The Commission finds by clear and convincing evidence that Mr. Stuart's conduct violated Ethics Code Sections 2.03.104A and D: he undermined public confidence in County Government because his ability to carry out his official duties with integrity, impartiality, and public confidence was impaired and he used his public office to secure private gain. The Commission recommends a sanction of six months suspension without pay.

**ORDER – COMPLAINT 13-04, January 18, 2014**

The investigation did not produce evidence to support the allegation that the subject condoned or permitted an insubordinate personal gathering during work hours in a County facility and the “probable cause” standard has not been met. The investigation did document administrative failings in regard to the absence of any procedures which would permit supervisors to control the use of County resources in regard to personal gatherings in County facilities during work hours. However, that issue was not part of this complaint and appears to be a matter that should easily be remedied by administrative means. The complaint is dismissed.

**ORDER - COMPLAINT 13-07, September 10, 2014, amended October 30, 2014**

The Commission finds that the word “shall” in Section 2.04.103D connotes mandatory action and, therefore, it concludes that a procedural error occurred since the Probable Cause report did not issue within 270 days after the initiation of the investigation. Consequently, the Commission no longer has authority to conduct further proceedings to resolve this complaint. The complaint is dismissed.

**ORDER - COMPLAINT 13-08, September 10, 2014, amended October 30, 2014**

The Commission finds that the word “shall” in Section 2.04.103D connotes mandatory action and, therefore, it concludes that a procedural error occurred since the Probable Cause report did not issue within 270 days after the initiation of the investigation. Consequently, the Commission no longer has authority to hold a hearing or conduct further proceedings to resolve this complaint. The complaint is dismissed.

**2016**

**ORDER – COMPLAINT 16-01, October 12, 2016**

The Commission received a Complaint of violation of the Ethics Code alleging that a County official, while serving on a County Board, had an unresolved conflict of interest which allowed for the perception and/or actual financial self-dealing on the part of the named official. After preliminary inquiry, the Commission voted to open a formal investigation of the matter. After formal investigation, the Commission did not find evidence to support the allegation that the official benefitted financially from his service on the Board. The investigation showed that the official recused himself from

a Board vote where no actual conflict existed, and that such recusal, while not inappropriate, may have caused confusion for the reasonable on-looker as to the basis for the recusal. Actively voting County officials and employees are strongly encouraged to review the Ethics Code, and Section 203.103.A.2 in particular, which section deals with voting abstentions and conflicts. The Complaint is dismissed.

**ORDER – COMPLAINT 16-08 and ORDER – COMPLAINT 16-09,  
both dated July 13, 2016**

Two complaints were lodged with the Commission that both alleged that a New Castle City councilman violated the New Castle County Ethics Code when he spoke with the complainants, in separate occasions, about the same constituent community issue in a rude manner which included inappropriate and racist language, in both encounters. Upon review of the documents presented by the complainants and the applicable laws, the Commission concluded that both of these matters fall outside of the jurisdiction conferred upon the Commission by the New Castle County Code, as they both involve the actions of an official representing the City of New Castle and not New Castle County. In making its findings, the Commission commented that if the alleged behavior of the New Castle City official had been proven to have been exhibited by a person covered by the County Ethics Code, such behavior would have been regarded by the Commission as a flagrant violation of the Ethics Code for which a recommendation of removal from office would have resulted. The Complaints are dismissed for lack of jurisdiction.

**2018**

**ORDER – COMPLAINT 00-20, dated March 29, 2018**

A complaint was filed that alleged that a County employee attempted to secure favorable treatment for the County employee's close relative with respect to the close relative's application for employment for a Merit System position in a County department. A formal investigation was undertaken by the Commission which resulted in the issuance of a probable cause report against the respondent County employee. While the respondent was not found to have violated the Ethics Code by a showing of 'clear and convincing evidence,' the Commission found that the irregular and possibly illegal manner in which the hiring process was handled for this position raised suspicion on the part of the complainant, County personnel, and others interviewed during the investigation as to possible special treatment of the respondent's close relative. The Commission believes that the culture which allowed these irregular practices to take place is unacceptable and strains the edges, if not the body, of the Ethics Code. A County employee should never be placed in a position where he or she is silently (or expressly) expected by a supervisor to perform an action that may be in abrogation of the rules or the law. The lack of procedures concerning training on County equipment during the hiring process to secure fair treatment of all applicants, as well as the lack of an explicit written recusal by the County employee/respondent, led the Commission to advise



implementation by all County departments of appropriate policies and customs, in accordance with the Commission's decision and final order.

## **2019**

**ORDER- C17-02, C17-03, C17-04, May 21, 2019:** The Commission issued an order which determined the resolution of three (3) complaints filed against the same respondent, C17-02, C17-03, C17-04, all three of which resulted in the issuance to the respondent of Probable Cause Reports after the completion of the formal investigation into each complaint. After the filing of these three complaints, the respondent was separated from County service.

**ORDER- C17-02, May 21, 2019:** The Commission found that the respondent violated the Ethics Code when he engaged in unacceptable and inappropriate behavior in the County workplace by openly displaying pornographic photographs or other potentially offensive images on his cell phone to New Castle County employees and/or County citizens. The Commission also found that the respondent engaged in unacceptable and inappropriate behavior in the County workplace by the telling of sexually explicit and/or "dirty" jokes to New Castle County employees and/or County citizens over a span of years. The Commission found that these actions by the respondent created an environment in the workplace that interfered with productivity, efficiency, and general work performance. Despite initial denials, the Respondent admitted that these allegations in this complaint were true and correct.

**ORDER- C17-03, May 21, 2019:** The Commission found that the respondent violated the Ethics Code by using his official County position for personal benefit through the manipulation, or through his attempt of manipulation, of subordinates, the Merit Code, and County policies to try to remove one or more subordinate from County employment through the use of deceit and manipulation of other employees and/or his subordinates. Even after the respondent was separated from employment with the County, a targeted subordinate continued to be harassed and mistreated by persons loyal to the respondent, including a supervisor, to carry out the plan to have the other subordinate removed from County service. The vindictive, manipulative, and deceitful behavior of the respondent caused one or more of his subordinates to receive disciplinary reprimands or measures, which could have resulted in the termination of one or more them if the Human Resources Office had not eventually intervened and summarily discharging the respondent. This complaint included virtually identical allegations against another respondent. Despite initial denials, the respondent admitted that all the allegations in the complaint were true and correct.

**ORDER- C17-04, May 21, 2019:** The Commission found that the respondent violated the Ethics Code by submitting, or causing to be submitted, falsified timekeeping records for the purpose of receiving unearned compensation from the County in some form. This behavior occurred repeatedly, over a span of years. The respondent's falsification of records was confirmed by a careful review of County records as compared to electronic accounting and witness statements. The Commission found that the respondent committed this theft of time from the County in clear violation of the Ethics Code and could amount to criminal acts. The Commission found that the respondent's denial of these allegations was without merit and not supported by the weight of the evidence. This complaint also included a second named respondent and alleged that the respondent was aided and abetted in his repeated theft of time by the other named respondent. The Commission did not issue a Probable Cause Report as to the other named respondent because this violation was not proven to a level which satisfied the Commission for an allegation of this seriousness. Logic dictates, however, that the respondent's ability to commit a repeated violation of this nature is highly unlikely to have taken place without the deliberate and knowing assistance of at least one other County employee, if not more.

**ORDER - C17-02, C17-03, C17-04, May 21, 2019:** The proven allegations in these three complaints shocked the conscience of the Commission. When a County employee uses, abuses, and mistreats other County employees, as the respondent did, the trust of the public in that government is not only undermined, it may be irretrievably shattered. It is unfortunate that the respondent, as a County employee in a position of trust, was permitted to commit improper acts and violations of the Ethics Code for so long. Because the respondent ultimately cooperated with the Commission and other mitigating factors, the Commission refrained from ordering the imposition against the respondent of financial penalties. In consideration of the seriousness of the Ethics Code violations committed by the respondent as alleged in all three complaints, and the knowing and deliberate repetition of the violations by the respondent, the Commission recommended that the respondent is never re-appointed or re-employed by the County.

## **SYNOPSIS OF COMMISSION WAIVERS** **2006**

### **WAIVER 06-02, June 14, 2006**

A waiver of the post-employment restriction is granted to the Law Department in this case. Literal enforcement of the provision would create an undue hardship to the Law Department and the County in this matter because the timing of the Court order was not at the instigation of or within the control of the Department and there is no other law department employee or other potential contract attorney who could reasonably acquire sufficient knowledge to craft a defense of the County treasury in the allocated period.

The Commission reviewed the contract terms, found them to be reasonable and to reflect arms-length dealing, as well as limited in time and scope to the production of the Answering brief.

**WAIVER 06-03, July 12, 2006**

The department may contract with the former employee to assist the new employee for a temporary period because the former employee did not offer an opinion, direct an investigation, nor was directly and materially responsible for the subject matter of the contract when in public employment.

**WAIVER 06-04, August 9, 2006**

The waiver for filing the 2005 Statement of Financial Interests is granted. The purpose of financial disclosure by County officials and employees is to assure the public that the personal financial interests of employees and the holders of, nominees to, or candidates for public office do not conflict with their exercise of the public trust. The literal application of the requirement in this case is not necessary to achieve that public assurance because the official did not appear as a County official in 2005 or exercise County authority in 2005 and resigned from County duties early that year.

**2007**

**WAIVER 07-01, June 13, 2007**

The waiver of the post-employment prohibition is granted. On balance, the undue hardship to the County in enforcing the post-employment provision exceeds the perceived personal benefit to the former employee. A Commission decision to waive the post-employment prohibition so that the former employee may represent the County while in the employment of the private attorney significantly ameliorates the obvious and immediate hardship to the County caused by that employee's resignation and the unavailability of a replacement and advances the interests of the County in the both litigation cases.

**2008**

**WAIVER 08-01, January 9, 2008**

The waiver request is granted. On balance, the undue hardship to the County in enforcing the post-employment provision exceeds the perceived personal benefit to the former employee. A Commission decision to waive the post-employment prohibition so that the former employee may return for a six-month period as a private contractor with the County following his unforeseen retirement significantly ameliorates the obvious and immediate hardship presented by the loss of two of the three critical members of group on a project scheduled for completion in the near future and advances the interests of the public.

**WAIVER 08-02, May 14, 2008**

The waiver request is granted. On balance, the undue hardship to the County in enforcing the post-employment provision exceeds the personal benefit to the former employee. The Department took reasonable steps to prepare successors to take over the employee's duties in the face of her unexpected retirement but was unable to complete that training as a result of the abbreviated timeframe. Loss of the employee's unique expertise creates a potentially significant impact on the County treasury in the near future and short-term reemployment at a reasonable hourly rate eliminates that potential. The Commission waives the post-employment prohibition so that the former employee may return for an up to four-month period as a private contractor with the County.

**WAIVER 08-03, November 12, 2008**

The waiver request is granted. On balance, the undue hardship to the County in enforcing the post-employment provision exceeds the personal benefit to the former appointed official. Several important long-term projects are ongoing and both an interim and a subsequently appointed replacement will need assistance from the retiring official to ensure a smooth transition of duties in regard to those projects. The short duration of the proposed contract at the official's former hourly rate meets the test of reasonableness.

**2009**

**WAIVER 09-01, February 11, 2009**

The waiver is granted for a period of five months. On balance, undue hardship would exist for the Department if the prohibition were to be enforced because public safety needs prevented it from being prepared for the officer's retirement. This hardship exceeds the perceived personal benefit to the former employee. The Commission finds that a waiver in this instance, where the successful job applicant necessarily would have to have current and intimate knowledge of current County Police procedures and equipment, would not reduce public confidence in the fairness of the hiring practices of the Department.

**WAIVER 09-02, May 13, 2009**

The waiver is granted for a period of twelve months. On balance, the Department's inability to train a successor and the unique administrative skills required to avoid over spending or forfeiting federal monies create undue hardship to the Department which exceeds the financial benefit to the recently retired employee. Under these circumstances, a waiver would not reduce public confidence in the Department's hiring practices.

**WAIVER 09-03, October 14, 2009**

The waiver request is granted for a period of six months. On balance, the undue hardship to the County in enforcing the post-employment provision exceeds the personal benefit to the retiree. In this case, the Department does not appear to have adequate internal or external resources to accomplish the fiscal goals aside from

contracting with the retiree. A six-month contract at the retiree's former salary rate may prevent a potentially significant impact on the County treasury and would not reduce the public's perception of fairness in the Department's hiring practices.

## **2010**

### **WAIVER 10-01, May 12, 2010**

The waiver is denied. The Commission finds that the position would require the retiree to perform duties for which she was materially responsible immediately prior to her retirement and which do not require specialized or complex skills unique to the retired employee. The Department has not described any resulting undue hardship if it does not hire the retiree. The Commission finds that the grant of a waiver is not warranted in the absence of undue hardship as it would render the Code's two-year prohibition meaningless and weaken the public's confidence in the Department's hiring practices.

### **WAIVER 10-02, May 12, 2010**

The waiver is granted. On balance, undue hardship would exist for the Department if the prohibition were to be enforced, the grant of a waiver would not reduce public confidence in the Department's hiring practices, and the hardship to the Department exceeds the financial benefit to the recently retired employee. The waiver period may not exceed six months and the payment shall be at an hourly rate not to exceed the retiree's former salary.

## **2011**

### **WAIVER 11-01, July 13, 2011, reconsidered August 17, 2011**

The waiver is granted for a period of three months and hourly payment shall not exceed 80% the retiree's former salary. The Commission finds that the hardship to the Department and potential harm to the pensioners exceeds the financial benefit to the recently retired employee. The Commission finds that a waiver would not reduce public confidence in the fairness of the Department's hiring practices. Upon reconsideration, the waiver is amended to extend the period to five months.

## **2012**

### **WAIVER 12-01, March 14, 2012**

Denied. The Commission has no authority to waive an appearance of impropriety for an official or employee.

### **WAIVER 12-03, June 13, 2012**

Approved. The waiver is granted until August 31, 2012, at 80% the retiree's former salary. The Commission finds that the hardship to the Department, and potential negative affect on a broad range of entities, exceeds the financial benefit to the recently

retired employee. The Commission finds that in this emergency situation a waiver would not reduce public confidence in the fairness of the Department's hiring practices.

**WAIVER 12-04, November 14, 2012**

The request for the waiver is dismissed. The Commission finds that a post employment waiver is not required in this case because the retiree did not give an opinion, did not conduct an investigation, and was not otherwise directly and materially responsible for the creation of the proposed new program in the course of his former official duties.

**2013**

**WAIVER 13-01, February 21, 2013**

The Commission finds that the hardship to the County exceeds the financial benefit to the requester and that waivers would not reduce public confidence in the fairness of the Department's hiring practices. A limited waiver in the matter of the litigation is granted only until the discovery phase of the case begins. A waiver is granted in the contract matter for the duration of the arbitration.

**2015**

**WAIVER 14-01, January 7, 2015**

The waiver is granted for a period of six months, with the opportunity to request renewal at that time; payment shall be at \$40.00 per hour and shall be capped at \$6,000.00. The Commission finds that the hardship to the Row Office and potential harm to the public exceed the financial benefit to the recently retired employee.

**2016**

**WAIVER, 16-03, April 13, 2016**

A waiver requested by the Department of Community Services of the two-year post-employment restriction, found in Section 2.03.103.D of the New Castle Count Ethics Code, should be waived in order that it may contract with a retired County employee to perform certain of the former County employee's duties for a very limited duration. On balance, the undue hardship to the County in enforcing the post-employment provision exceeds the personal benefit to the retiree. The Department anticipates a duration of 10 hours of post-employment of the retiree at a cost to the County of approximately \$250.00.

## 2017

### **WAIVER, 17-01, February 8, 2017**

A waiver of the 2-year post-employment restriction in the Ethics Code is waived in order for a County department to contract with a former County employee to perform an evaluation of whether that department's objectives of its strategic plan have been met. On balance, the undue hardship to the County in enforcing the post-employment provision exceeds the personal benefit to the former employee. The approved waiver is limited to the facts present in this request, that is, a short-term contract (perhaps two months) at an approximate total cost to the County of \$14,900. The rate of pay under this contract to this former County employee amounts to 62% of the rate of pay this former employee received when employed by the County.

### **WAIVER, 17-04, November 14, 2017**

A waiver of the 2-year post-employment restriction may be waived for a very short-term contractual employment of a County employee who is about to retire. The Department needs to overcome a gap in service while the County searches for a permanent replacement of the retiree. The very short-term contract would include a rate of pay not to exceed the employee's rate of pay at the time of retirement, and for the purpose of training a new employee on the job duties and responsibilities. Such a contract will prevent cessation of important Services with little impact on the County's resources, and without unjust enrichment inuring to the benefit of the retiree.