

Board of Ethics Advisory Opinion 23-001

June 21, 2023

Question:

By email dated May 22, 2023, Sarah Coleman, who was recently appointed as a member of the Environmental Advisory Board (“the Environmental Board”) and who also is a member of the Parks and Recreation Advisory Board (“P&R Board”), requested an Advisory Opinion from the Board of Ethics on whether companies in which she has an ownership or equitable (financial) interest and which employ her could solicit contracts from the County doing landscaping and/or stormwater management and/or site naturalization work.

Answer:

The conflict of interests provisions of Harford County Code (“HCC”) § 23-5 preclude Ms. Coleman from serving on the Environmental Advisory Board and the Parks and Recreation Advisory Board, because such service affords her an opportunity: (1) to gain invaluable knowledge and insight into future County project plans and requirements; and (2) to develop valuable relationships with the County personnel who influence the award of such County contracts. In short, such a service could provide her and her private business interests with an advantage in seeking procurement of County contracts that benefit such private business interests. Even though the advisory boards may not review requests for proposals or award County contracts, such knowledge, insight, and familiarity with County personnel who influence the award of such contracts gives rise to the types of conflict of interests and appearance of impropriety that are prohibited by the County Code of Ethics and would be detrimental to the public trust protected by the County procurement system.

Facts:

Ms. Coleman is employed by and has an ownership interest in two business entities: Four Seasons Landscape & Construction Services (“Four Seasons”); and Sustainable Landscapes One (“Sustainable Landscapes”). Four Seasons is a current vendor of the County and has, and has had, ongoing contracts with the County to perform landscaping and stormwater management projects for the County. Sustainable Landscapes is a relatively new business venture that provides consulting services relative to landscaping, stormwater management and naturalization work. Ms. Coleman is pursuing contracts with the County on behalf of Sustainable Landscapes.

Analysis:

The Environmental Board “advise[s] the County Executive and the County Council on environmental issues of concern to the citizens of Harford County, [] encourage[s] the preservation and protection of the natural environment of the County and [] work[s] with federal, state or local agencies, boards or commissions or private organizations in furthering the goal of preserving and

protecting the environment of the County and encouraging cooperation in [such] efforts.” HCC § 9-18.¹ The powers and duties of the Environmental Board include:

1. **Review** management recommendations that have evolved from the summary reports of the Environmental Protection Agency Chesapeake Bay Program. These recommendations shall include but are not limited to the Governor's initiatives and the regulations prepared by the Maryland State Department of Natural Resources, the Maryland State Department of Agriculture and the Maryland State Department of Health and Mental Hygiene. The Board shall evaluate these initiatives and regulations considering their effects on Harford County and develop recommendations that will lead to local government implementation of the Chesapeake Bay Program recommendations.
2. **Review and comment** on major County plans prior to adoption to ensure that environmental concerns are adequately addressed. These plans shall include the Master Plan, open space plan, watershed plans, stormwater management plan, flood management plan, comprehensive water and sewer master plan, solid waste management plan and major road plans.
3. **Assist** government and private organizations in educating the citizens of Harford County on issues concerning the environment.

HCC § 9-19A (emphasis supplied). One emphasis of the Environmental Board is to advocate for the natural environment of the County. *See* HCC §§ 9-18, 9-19A (1), 9-19C. The Environmental Board is an advisory board. It does not make any decisions on behalf of the County, and it does not engage in any actions that are binding on the County.

The P&R Board “make[s] **recommendations** to the County Executive and the Council relating to plans, policies and programs for public recreation, the organization of recreation councils, the operation and maintenance of public parks and the acquisition of land for public parks.” Harford County Code (“HCC”) § 9-145A (emphasis supplied). Additionally, the Director of the Department of Parks and Recreation (“DPR”) is required to have the P&R Board review and make recommendations relative to DPR land acquisition or sale, DPR land improvements, DPR policy and DPR organization/reorganization. *Id.* Service as a member of the P&R Board is voluntary and without compensation. The P&R Board is an advisory board. It does not make any decisions on behalf of the County, and it does not engage in any actions that are binding on the County.

¹ The National Environmental Policy Act of 1972 (“NEPA”) recognizes that the term “environment” is an all-encompassing term. The term “environment” includes: the human environment; the economic environment; the natural environment; and the aesthetic environment. Such environments can have competing objectives that are not aligned. The overarching objective of NEPA is to require government officials and policy makers to give consideration to the foregoing and often competing environmental concerns and to strike a balance between such concerns that best serves the public interest at large. By way of example, oil and other natural minerals constitute the raw materials on which our interdependent society is dependent and have given rise to the machines and technology that has enabled the standard of living to increase multifold and has led to the decline of direct human enslavement. Nevertheless, the mining/extraction of such minerals can scar and inflict long term damage on the natural environment. A well-functioning environmental advisory board seeks to balance the interests of the competing environments that have given rise to our interdependent society.

The Harford County Code of Ethics (the “Ethics Code”) applies to a person appointed to serve on a County advisory board. HCC § 23-2 (emphasis on definition of official). Thus, the Ethics Code applies to Ms. Coleman.

Ms. Coleman is subject to the “Conflicts of Interest” provision of the Ethics Code (HCC § 23-5), which prohibits Ms. Coleman from:

- Participating in any official matter in which she has an interest (HCC § 23-5C (1); or
- Participating in any official matter in which an entity in which she has a direct financial interest or in which she is an officer, director, trustee, partner or employee has an interest (HCC § 23-5C (2).

The term “interest” and “financial interest” are very broadly defined terms in the Ethics Code and encompass any legal or equitable economic interest. HCC § 23-2.1. Ms. Coleman clearly has direct knowledge of potential county related EAB project plans and is a potential party to a resulting county contract relative to landscaping, stormwater management and naturalization work as entities in which she is an employee and has other significant equitable interest contracts with the County to supply such services. Thus, Sections 23-5C (1) & (2) disqualify and prohibit Ms. Coleman from engaging in matters of County procurements because of the activities within the purview of the Environmental Board and the P&R Board. The Board of Ethics has the discretionary authority, pursuant to an official opinion or regulation, to modify and expound upon the general prohibitions in Section 23-5C of the Harford County Code. HCC §§ 23-5C (preamble) & 23-5C (4). Additionally, the Board may recommend an exemption be granted to an official to the County Council consistent with HCC § 23-5H (6)(a) and 23-8 assuming the recommendation is “not contrary to the provisions of HCC § 23-5.”

A person with knowledge, training and/or experience in landscaping, stormwater management and naturalization can provide valuable insight and understanding of such issues to the members of the Environmental Board and the P&R Board. Such insight and understanding would be useful and of value to those boards and the County Executive, the Director of DPR and the Councilmembers who are recipients of the advice and recommendations of such boards.

The Board of Ethics commends Ms. Coleman for recognizing that her participation on the Environmental Board and the P&R Board gives rise to a potential conflict of interest in violation of the Ethics Code.

After consideration and discussion of the foregoing, the Board of Ethics determines that Ms. Coleman is disqualified from serving on the Environmental & P&R Boards due to the unmitigated financial interests of her companies competing directly for Board related county procurements. Ms. Coleman is an official (HCC § 23-2) and is subject the Conflict-of-Interest requirements in HCC § 23-5 prohibiting participation and receipt or award of county procurements related to the projects under review as a member of the Environmental Advisory Board and the Parks and Recreation Advisory Board. As stated, her review and comment role gain invaluable knowledge and insight into future project plans and requirements and valuable relationships with the County personnel who influence the award

of such County contracts. As such, it causes concern and the appearance of impropriety that undermines the integrity and trust of county procurement system. Further, the Board does not see how an exemption would protect or would not be contrary to the public trust inherent with the procurement system. Therefore, it does not recommend an exemption to the County Council for approval consistent with HCC §§ 23-5H (6)(a) and 23-8.

Kirk F Vollmecke

Board of Ethics Chairman
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