

Issue:

Whether, pursuant to Section 1103( a) of the Public Official and Employee Ethics Act Ethics Act), 65 Pa.C. S. § 1103( a), you would have a conflict of interest in your capacity as the [ ~~PUBLIC POSITION TOWNSHIP MANAGER~~] for [ ~~MUNICIPALITY KENNETT TOWNSHIP~~] with regard to providing assistance to the [ ~~GOVERNMENTAL BODY KENNETT FIRE AND EMERGENCY SERVICES COMMISSION OR FIRE COMMISSION~~], which allocates municipal funding to the [ ~~COMPANY LONGWOOD FIRE COMPANY~~] and two other [ ~~TYPE OF COMPANIES FIRE COMPANIES~~], where: ( 1) you serve as a [ ~~POSITION-1 VOLUNTEER~~] with the [ ~~COMPANY LONGWOOD FIRE COMPANY~~]; and ( 2) your [ ~~RELATIVE WIFE~~] serves as a [ ~~POSITION-1 VOLUNTEER~~] with the [ ~~COMPANY LONGWOOD FIRE COMPANY~~] and is employed as the [ ~~POSITION-2 EXECUTIVE ASSISTANT~~] to the [ ~~POSITION-3 FIRE CHIEF~~] of the [ ~~COMPANY LONGWOOD FIRE COMPANY~~]?

Brief Answer: You would have a conflict of interest with regard to providing assistance to the [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~] in your capacity as the [ ~~MUNICIPALITY KENNETT TOWNSHIP PUBLIC POSITION TOWNSHIP MANAGER~~] if: (1) you would be consciously aware of a private pecuniary benefit for yourself, your [ ~~RELATIVE WIFE~~], or the [ ~~COMPANY LONGWOOD FIRE COMPANY~~], which is a business with which your [ ~~RELATIVE WIFE~~] is associated in her capacity as an employee; ( 2) your action( s) would constitute one or more specific steps to attain that benefit; and ( 3) neither of the statutory exclusions to the definition of " conflict" or " conflict of interest" as set forth in the Ethics Act, 65 Pa.C. S. § 1102, would be applicable.

Facts:

You request a confidential advisory from the Commission based upon the following submitted facts:

You are the [ ~~PUBLIC POSITION TOWNSHIP MANAGER~~] for [ ~~MUNICIPALITY KENNETT TOWNSHIP~~], [ COUNTY], Pennsylvania. The [ ~~MUNICIPALITY KENNETT TOWNSHIP~~] is a [ TYPE OF POLITICAL SUBDIVISION] with a [ GOVERNING BODY].

The [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~] was formed by [ NUMBER] municipalities, including the [ ~~MUNICIPALITY KENNETT TOWNSHIP~~], pursuant to the [ AGREEMENT]. Each municipality appoints one [ MEMBER] of the [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~] and one [ ALTERNATE MEMBER] to act in the stead of the municipality' s appointed [ MEMBER] when necessary. Two [ ~~MUNICIPALITY KENNETT TOWNSHIP PUBLIC OFFICIALS~~] serve as the [ MUNICIPALITY' S] appointees to the [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~].

[ CERTAIN SERVICES] are provided to the [ NUMBER] municipalities by [ NUMBER] [ TYPE OF COMPANIES] ( the Providers), including the [ ~~COMPANY LONGWOOD FIRE COMPANY~~]. The primary function of the [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~] is to interface with the Providers and allocate municipal funding to the Providers for [ CERTAIN NEEDS]. You have submitted a copy of the [ AGREEMENT], which provides, in pertinent part, that each Provider shall continue to be a [ TYPE OF LEGAL ENTITY] with its own [ REDACTED] and that each Provider shall not be deemed to be an agent of the [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~] or any of the [ NUMBER] municipalities.

The [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~] and its [ MEMBERS] are not [ TYPE OF PERSONNEL]. You do not serve in any formal role with the [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~]. The [ ~~MUNICIPALITY KENNETT TOWNSHIP~~] [ ~~GOVERNING BODY BOARD OF SUPERVISORS~~] has allowed you to perform [ CERTAIN ACTIVITIES FOR THE ~~GOVERNMENTAL BODY FIRE COMMISSION~~]. At times you make recommendations to the [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~] based on your [ACTIVITIES]. Some of the work that you have performed has led to significant changes in [ CERTAIN MATTERS]. Your work product for the ~~GOVERNMENTAL BODY FIRE COMMISSION~~ is completed during your [ ~~MUNICIPALITY KENNETT TOWNSHIP~~] work hours and through the use of [ ~~MUNICIPALITY KENNETT TOWNSHIP~~] resources, including [ ~~MUNICIPALITY KENNETT TOWNSHIP~~] computers and staff.

The [ ~~COMPANY LONGWOOD FIRE COMPANY~~] is a [ TYPE OF CORPORATION]. The [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~] provides funding for [ PERCENT] of the [ ~~COMPANY LONGWOOD FIRE COMPANY~~' S] [ REDACTED], which is set by the [ ~~POSITION-3 FIRE CHIEF~~] and [ ENTITY].

You serve as a [ ~~POSITION-1 VOLUNTEER~~] with the [ ~~COMPANY LONGWOOD FIRE COMPANY~~]. You do not serve in any other capacity ( such as [ ENTITY] Member, [ TEAM] member, or [ TYPE OF OFFICER]) with the ~~COMPANY LONGWOOD FIRE COMPANY~~].

Your [ ~~RELATIVE WIFE~~], [ GABRIELLE RATLIFF], serves as a [ ~~POSITION-1 VOLUNTEER~~] with the [ ~~COMPANY LONGWOOD FIRE COMPANY~~]. Your ~~RELATIVE WIFE~~ is not a [ ENTITY] Member or [ TYPE OF OFFICER] of the [ ~~COMPANY LONGWOOD FIRE COMPANY~~]. On DATE], your [ ~~RELATIVE WIFE~~] was hired to be the [ ~~POSITION-2 EXECUTIVE ASSISTANT~~] to the [ ~~POSITION-3 FIRE CHIEF~~] of the ~~COMPANY LONGWOOD FIRE COMPANY~~]. The position of [ ~~POSITION-2 EXECUTIVE ASSISTANT~~] is not funded by the [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~]. You state that you have recused yourself from performing any work for the [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~] due to the appearance of a conflict of interest in relation to your [ ~~RELATIVE WIFE~~' S] employment with the [ ~~COMPANY LONGWOOD FIRE COMPANY~~].

Based upon the above submitted facts, you pose the following questions with regard to your ability to provide assistance to the [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~] by performing [ CERTAIN WORK FOR] the [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~]:

1. Would your service as a [ ~~POSITION-1 VOLUNTEER~~] with the [ ~~COMPANY LONGWOOD FIRE COMPANY~~] cause you to have a conflict of interest in your capacity as the [ ~~MUNICIPALITY KENNETT TOWNSHIP PUBLIC POSITION TOWNSHIP MANAGER~~] with regard to providing assistance to the [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~];
2. Would your [ ~~RELATIVE WIFE~~' S] employment with the [ ~~COMPANY LONGWOOD FIRE COMPANY~~] cause you to have a conflict of interest in your capacity as the [ ~~MUNICIPALITY KENNETT TOWNSHIP PUBLIC POSITION TOWNSHIP MANAGER~~] with regard to providing assistance to the [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~];
3. Would the [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~] be able to waive any conflict of interest which you might have so that you would be permitted to provide assistance to the ~~GOVERNMENTAL BODY FIRE COMMISSION~~];

4. If the [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~] cannot waive any conflict of interest which you might have, would you be permitted to provide assistance to the ~~GOVERNMENTAL BODY FIRE COMMISSION~~] as a volunteer and not with [ ~~MUNICIPALITY KENNETT TOWNSHIP~~] resources; and

5. If the [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~] cannot waive any conflict of interest which you might have, would you be able to provide assistance to the ~~GOVERNMENTAL BODY FIRE COMMISSION~~] if you would be hired as an employee of the ~~GOVERNMENTAL BODY FIRE COMMISSION~~].

Discussion:

Pursuant to Sections 1107( 10) and 1107( 11) of the Ethics Act, 65 Pa.C. S. §§ 1107( 10), 11), advisories are issued to the requester based upon the facts that the requester has submitted. In issuing the advisory based upon the facts that the requester has submitted, the Commission does not engage in an independent investigation of the facts, nor does it speculate as to facts that have not been submitted. It is the burden of the requester to truthfully disclose all the material facts relevant to the inquiry. 65 Pa.C. S. §§ 1107( 10), ( 11). An advisory only affords a defense to the extent the requester has truthfully disclosed all the material facts.

Section 1103( a) of the Ethics Act provides:

1103. Restricted activities

a) Conflict of interest. -- No public official or public employee shall engage in conduct that constitutes a conflict of interest.

65 Pa. C. S. § 1103( a).

The following terms related to Section 1103( a) are defined in the Ethics Act as follows:

1102. Definitions

Conflict" or " conflict of interest." Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated.

Authority of office or employment." The actual power provided by law, the exercise of which is necessary to the performance of duties and responsibilities unique to a particular public office or position of public employment.

Immediate family." A parent, spouse, child, brother or sister.

Business." Any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust or any legal entity organized for profit.

Business with which he is associated. " Any business in which the person or a member of the person's immediate family is a director, officer, owner, employee or has a financial interest.

65 Pa. C. S. § 1102.

Subject to the statutory exclusions to the Ethics Act's definition of the term " conflict" or conflict of interest" ( i.e., the " de minimis exclusion" and the " class/ subclass exclusion"), 65 Pa.C. S. § 1102, a public official/public employee is prohibited from using the authority of public office or confidential information received by holding such a public position for the private pecuniary ( financial) benefit of the public official/public employee himself, any member of his immediate family, or a business with which he or a member of his immediate family is associated.

In each instance of a conflict of interest, the public official/ public employee would be required to abstain from participation. The abstention requirement would extend to any use of authority of office including, but not limited to, discussing, conferring with others, and lobbying for a particular result. Juliante, Order 809.

Per the Pennsylvania Supreme Court's decision in *Kistler v. State Ethics Commission*, 610 Pa. 516, 22 A. 3d 223 ( 2011), in order to violate Section 1103( a) of the Ethics Act, a public official/public employee:

must act in such a way as to put his [ office/public position] to the purpose of obtaining for himself a private pecuniary benefit. Such directed action implies awareness on the part of the [ public official/ public employee] of the potential pecuniary benefit as well as the motivation to obtain that benefit for himself.

*Kistler*, supra, 610 Pa. at 523, 22 A. 3d at 227. To violate Section 1103( a) of the Ethics Act, a public official/ public employee " must be consciously aware of a private pecuniary benefit for himself, his family, or his business, and then must take action in the form of one or more specific steps to attain that benefit." *Id.*, 610 Pa. at 528, 22 A. 3d at 231.

A conflict of interest would not exist to the extent the " de minimis exclusion" and/ or the class/ subclass exclusion" set forth within the Ethics Act's definition of the term " conflict" or conflict of interest," 65 Pa. C. S. § 1102, would be applicable.

The de minimis exclusion precludes a finding of conflict of interest as to an action having a de minimis ( insignificant) economic impact. Thus, when a matter that would otherwise constitute a conflict of interest under the Ethics Act would have an insignificant economic impact, a conflict would not exist, and Section 1103( a) of the Ethics Act would not be implicated. See, *Kolb*, Order 1322; *Schweinsburg*, Order 900.

In order for the class/ subclass exclusion to apply, two criteria must be met: ( 1) the affected public official, immediate family member, or business with which the public official or immediate family member is associated must be a member of a class consisting of the general public or a true subclass

consisting of more than one member; and ( 2) the public official, immediate family member, or business with which the public official or immediate family member is associated must be affected " to the same degree" ( in no way differently) than the other members of the class/ subclass. 65 Pa.C. S. § 1102; see, Kablack, Opinion 02- 003; Rubenstein, Opinion 01- 007. The first criterion of the exclusion is satisfied where the members of the proposed subclass are similarly situated as the result of relevant shared characteristics. The second criterion of the exclusion is satisfied where the individual/ business in question and the other members of the class/ subclass are reasonably affected to the same degree by the proposed action. Kablack, supra.

Conclusion:

In applying the above provisions of the Ethics Act to the instant matter, you are advised as follows:

As the [ ~~MUNICIPALITY KENNETT TOWNSHIP PUBLIC POSITION TOWNSHIP MANAGER~~], you are a public official/public employee subject to the provisions of the Ethics Act. If you would be hired as an employee of the ~~GOVERNMENTAL BODY FIRE COMMISSION~~, with duties that would involve making recommendations on CERTAIN MATTERS], you would in that capacity be a public employee subject to the Ethics Act.

Your [RELATIVE WIFE] is a member of your "immediate family" as that term is defined in the Ethics Act. The [ ~~COMPANY LONGWOOD FIRE COMPANY~~] is not a business with which you are associated because you are not a director, officer, employee, or holder of a financial interest in the [ ~~COMPANY LONGWOOD FIRE COMPANY~~]. However, the [ ~~COMPANY LONGWOOD FIRE COMPANY~~] is a business with which your [ RELATIVE WIFE] is associated in her capacity as an employee.

In your capacity as the [ ~~MUNICIPALITY KENNETT TOWNSHIP PUBLIC POSITION TOWNSHIP MANAGER~~] or in the capacity of a ~~GOVERNMENTAL BODY FIRE COMMISSION~~ employee —you would be restricted from using the authority of your public position for the private financial benefit of yourself, a member of your immediate family such as your [ RELATIVE WIFE], or a business with which you or a member of your immediate family is associated, such as the [ ~~COMPANY LONGWOOD FIRE COMPANY~~].

You would have a conflict of interest under Section 1103( a) of the Ethics Act in your capacity as the [ ~~MUNICIPALITY KENNETT TOWNSHIP PUBLIC POSITION TOWNSHIP MANAGER~~] and/ or in the capacity of a ~~GOVERNMENTAL BODY FIRE COMMISSION~~ employee — with regard to assisting the [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~] by performing [ CERTAIN WORK FOR] the [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~] if: (1) you would be consciously aware of a private pecuniary benefit for yourself, your [RELATIVE WIFE], or the ~~COMPANY LONGWOOD FIRE COMPANY~~; ( 2) your action( s) would constitute one or more specific steps to attain that benefit; and ( 3) neither the de minimis exclusion nor the class/ subclass exclusion to the definition of conflict" or " conflict of interest" as set forth in the Ethics Act, 65 Pa. C. S. § 1102, would be applicable.

In each instance of a conflict of interest, you would be required to abstain fully from participation. The [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~] would not be able to waive any conflict of interest which you might have in your capacity as the [ ~~MUNICIPALITY KENNETT TOWNSHIP PUBLIC POSITION TOWNSHIP MANAGER~~] and/ or in the capacity of a [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~] employee, as the Ethics Act does not provide for waiver where a conflict of interest exists.

The Ethics Act would not prohibit you, in a private capacity as a volunteer and without using [ ~~MUNICIPALITY KENNETT TOWNSHIP~~] resources, from assisting the [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~] by performing [ CERTAIN WORK] for the [ ~~GOVERNMENTAL BODY FIRE COMMISSION~~].

The propriety of the proposed conduct has only been addressed under the Ethics Act; the applicability of any other statute, code, ordinance, regulation or other code of conduct other than the Ethics Act has not been considered in that they do not involve an interpretation of the Ethics Act. Specifically, this advisory does not address any applicability of the [ REDACTED] or the REDACTED].

Pursuant to Section 1107( 11) of the Ethics Act, an Advice is a complete defense in any enforcement proceeding initiated by the Commission, and evidence of good faith conduct in any other civil or criminal proceeding, provided the requester has disclosed truthfully all the material facts and committed the acts complained of in reliance on the Advice given.

This letter is a public record and will be made available as such. Finally, if you disagree with this Advice or if you have any reason to challenge same, you may appeal the Advice to the full Commission. A personal appearance before the Commission will be scheduled and a formal Opinion will be issued by the Commission. Any such appeal must be in writing and must be actually received at the Commission within thirty ( 30) days of the date of this Advice pursuant to 51 Pa. Code § 13. 2( h). The appeal may be received at the Commission by hand delivery, United States mail, delivery service, or by FAX transmission ( 717- 787- 0806). Failure to file such an appeal at the Commission within thirty ( 30) days may result in the dismissal of the appeal.