



December 15, 2021

State Ethics Commission
Attention: Legal Division
Finance Building
613 North Street, Room 309
Harrisburg, PA 17120-0400

Re: Kennett Square Borough, Chester County – Request for Advisory Ethics Opinion

To whom it may concern:

I serve as Council President for Kennett Square Borough, Chester County, Pennsylvania. I am submitting this request for an advisory opinion on behalf of the Borough. In summary, concerns have been raised about ethical issues associated with a participant in a regional fire and EMS commission, of which the Borough is a member. Any guidance that you can provide on the subject would be appreciated.

Background: Kennett Square Borough is a member of the multi-municipal, Kennett Fire and EMS Regional Commission. It was formed by six (6) municipalities, governed by an Intergovernmental Cooperation Agreement under the authority of the Pennsylvania Intergovernmental Cooperation Act, 53 Pa.C.S. § 2301 *et seq.* A copy of that Agreement is attached hereto.

The governing board of the Commission is comprised of two appointed representatives of each member municipality (a primary and alternate member). The Commission has several functions, which include: gathering information from emergency services providers as to their operations and needs; establishing the funding amounts that each member municipality is to contribute to the Commission on an annual basis; and distributing those funds to the emergency services providers.

The subject of the ethical concerns raised with the Borough is a Township Manager of one of the other member municipalities (the "Township" for the sake of this letter). The Township Manager had been an alternate voting member to the Commission in the past, but no longer serves in that role (at least during the immediate relevant period subject to this inquiry). At present, he is not a voting or alternate member of the Commission. However, he continues to attend the Commission meetings on behalf of the Township, to provide administrative support to the Commission, including on behalf of his Township, and to advocate for the Commission to take certain positions through his role as Township Manager.

The Township Manager's most recent advocacy arose in the context of the Commission's consideration of fire/EMS funding levels for 2022. The discussions centered on the possibility of substantial increases in funding of at least 18% - 50% due to requests by the fire and EMS service providers. The Township Manager made statements at the Commission's meeting on October 26, 2021, in which he spoke in favor of the higher funding levels. It was understood by the Borough representatives that the Township Manager was speaking on behalf of the Township for which he was the Manager, premised on information that he learned through his work with the Commission. His position was persuasive and guided much of the debate. At the end of that discussion on October 26th, the Commission voted to increase the municipal member contribution rates by 30%.

It was later learned by the Borough that the wife of the Township Manager had been hired as a paid employee by one of the fire companies that obtains funding through the Commission. For the sake of this letter, the fire company in question will be referenced as "Fire Company." The Fire Company has been one of the largest recipients of funding from the Commission and will undoubtedly receive increased funding as a byproduct of the increases to the member contribution rates voted on by the Commission. The wife of the Township Manager was introduced at a November 9, 2021, Commission meeting, but was only referenced by her first name. No indication was made that she was related to any of the representatives or employees of any of the member municipalities. It is the Borough's understanding that the position for which the wife was hired would not be possible absent the anticipated increased funding.

Upon information and belief, the wife of the Township Manager started her employment with the Fire Company on October 28th. While her "effective" date of employment was referenced as October 28th, it is anticipated that any interview for the position, consideration for the job, and offer/acceptance of employment would have occurred prior to the October 26, 2021, Commission meeting. The position had been posted since August 31, 2021. As noted above, this October 26 meeting is one where the Township Manager advocated for the increased funding, without disclosure of any of the above, and at which the Commission voted on an increase.

Additionally and alternatively, it has been represented to the Borough that the Township Manager, his wife and/or his brother have been unpaid volunteer members of the Fire Company prior to all of the above events. The Borough is unaware of the accuracy of these statements, but notes them for the purpose of obtaining an opinion from the State Ethics Commission on their impact, if true. Of particular note is that, during that time, the Township Manager made and/or promoted before the Commission various proposals for it to support or fund Fire Company programs that would provide monetary reward or compensation to volunteers.

Advisory Opinion Request: In light of the above facts and circumstances (as understood by the Borough), an advisory opinion from the State Ethics Commission is requested. 1) Does the Township Manager's advocacy before the Commission for increased municipal member funding constitute a conflict of interest under Section 1103 of the State Ethics Act, in light of his spouse's employment with one of the recipient fire companies; 2) Are fire/emergency services volunteers required to recuse themselves under Section 1103 from deliberation or advocacy, *with regard to their roles as a municipal official of a member*, on municipal or Commission decisions that would impact municipal contributions to those fire/emergency services companies; 3) Whether advocacy for Commission funding or support for payments to volunteers be considered a conflict of interest under the Act; and 4) What measures or actions should be implemented by the individuals involved with respect to future discussion, deliberation or vote on actions that would impact contributions to the Commission or the fire and emergency service providers that it funds?

The Borough appreciates your consideration of the above inquiry. Should you need any clarification in your assessment, please do not hesitate to reach out to the Borough staff.

Sincerely,



Brenda Mercomes
Borough Council President