



City of Rockville Ethics Commission

ADVISORY OPINION 25-01

July 30, 2025

Request

This advisory opinion is being issued in response to a question posed by a councilmember. That question is considered a request for an advisory opinion pursuant to §16-3(i) of Chapter 16 **Public Ethics** of the Rockville City Code (“**Code**”). Specifically, the councilmember (the “Requestor”) asked the following in relation to potentially serving on the Board of a nonprofit organization that receives grant funds from the City:

1. “Can I join the Board of a nonprofit organization that does get grants from the city?”
2. “If so, how can I ensure that there is no conflict of interest and what should I do if there is one?”

Short Answer

Yes, in some limited situations, a councilmember may join a Board of a nonprofit, that receives City funds, but there are restrictions that should be followed to reduce the risk of conflicts of interest. These restrictions include not participating in votes, not being compensated, and not fund-raising for the nonprofit in a way that could be seen as using the prestige of office for the benefit of the private organization.

Depending on the nature of the work of the nonprofit, there may be such an extensive connection between the nonprofit and the City that a conflict cannot be avoided. In those instances, the councilmember should not serve on the Board of the nonprofit.

(Note: this Opinion focuses on councilmembers, but the analysis also applies to other persons such as employees covered by the Code).

Detailed Discussion

Legal framework

These questions are governed by State law, Md. Code Ann., General Provisions (§ 5-101 through 5-1001) (“**Maryland Ethics Law**”), and Chapter 16 – **Public Ethics** – of the Rockville City

Code (“**Code**”). As State law requires, the Code provisions track the Maryland Ethics Law and provide a path for addressing conflicts of interest whether those conflicts arise from the business dealings of the councilmember, or from that of a family member. Additionally, there are State Ethics Opinions that address these types of issues and that are relevant to this discussion.

The Code, Section 16-2 – *Purpose and Policy* – states Council has determined: “our system of representative government is dependent in part upon the people maintaining the highest trust in their public officials and employees...” Moreover, “[i]t is evident that this confidence and trust is eroded when the conduct of the City's business is subject to improper influence and can be eroded where there is even the appearance of improper influence.”

Specific relevant Code provisions

Consistent with Maryland Ethics Law, the Code defines “business entity” to include nonprofit entities. (§16-1 - *Definitions*).

The Code (§16-25) prohibits elected officials (and employees and appointed officials) from participating in decisions of the City in which they or a qualified relative has an interest (“Qualified relative means a spouse, domestic partner, parent, child or sibling” per Code §16-1 – *Definitions*).

Code Section 16-25 states a person who would be disqualified from participating in an action shall disclose the nature and circumstances of the conflict and may only participate in the action if the disqualification leaves the body with less than a quorum capable of acting, or the person is required by law to act, or the person is the only person authorized to act.

Additionally, Code Section 16-28 states no elected or appointed official or employee may intentionally use the prestige of their office for personal private gain, or for the gain of another.

Service for which a conflict can be avoided

The State Ethics Commission (“**Ethics Commission**”) has recognized there may be situations where the Board on which the official or employee wants to serve is sufficiently distinct from the government services and the regulatory actions of the government entity where the official or employee works so that the conflict is non-existent or very remote. In Opinion No. 86-16, the Administrator of a State Highway facility asked if he could serve on a local planning commission. The Ethics Commission found the State Highway facility did not interact with the local planning commission or the county, and therefore allowed the Administrator to serve on the local planning commission.

If a person who wants to serve on the Board can document the potential conflict is sufficiently remote as to be avoidable, then that person may serve. However, there may be situations when they need to communicate that they are disqualified from a particular decision or action of the Board and the City.

Communicating a disqualification is done through “recusal” in which the councilmember would disclose their conflict in a public meeting, not participate in the conversation on the dais, and would make sure the record reflected their abstention from the vote.

If, for example, the nonprofit was receiving a small one-time grant through the City budget and would otherwise have no interactions with City processes, when the Mayor and Council adopts the budget, the councilmember could state at the meeting they are abstaining from the discussion due to the conflict of being on the Board of the nonprofit. When the vote is taken, they would state on the record that they are voting for (or against) the budget but abstaining on the portion of the budget relating to the nonprofit.

A similar process may be followed for actions of the Board of the nonprofit – the attorney for the nonprofit should be able to advise on the particulars of their meeting procedures.

As the nonprofit is preparing its budget, or grant application, the councilmember would similarly recuse themselves from the discussion and action per the direction of the attorney for the Board of the nonprofit.

The more remote the connection with the City, the more likely the conflict can be avoided. However, the person serving on the Board will still need to be careful not to take actions that would create the appearance of impropriety – for example, appearing as part of fundraising activities for the nonprofit or taking actions to seek gifts for the nonprofit and using their title or official capacity in such actions. This would be using the prestige of the councilmember’s office for the gain of another.

Conflicts that cannot be avoided

There may be situations where the conflict of interest cannot be avoided.

In its Ethics Opinions, the Ethics Commission clarified that non-compensated service on a Board of Directors of a private entity constitutes employment for purposes of the Ethics laws. (*See, e.g.,* Opinion No. 02-02). In this Opinion, the Ethics Commission reviewed whether the Director of Social Services for a small county could serve on the Boards of two community organizations. The Ethics Commission noted the first organization had a substantial relationship with the county to provide social service care. There was cross-over between the clients of the county and the nonprofit. The Ethics Commission said this relationship was too close for the county employee to serve on the Board. For the second organization, there was no contractual relationship between the county and the nonprofit and the services provided by the nonprofit were less connected to the services provided by the county. Although cautioning against using the prestige of office for fundraising and other activities for the nonprofit, the Ethics Commission said this Board membership could be permissible. Should there have been any concerning votes, or should the employee have been asked to fundraise (*e.g.,* using their official title), the employee would need to recuse from the votes and not engage in fundraising. (*See also* Opinion No. 82-22- service by an Executive Director of a Regional Planning Council on advisory boards for matters that came before the Planning Council even though without pay, was employment with a conflict that could not be avoided).

Examples of conflicts that cannot be avoided could also include situations such as the first nonprofit in the Ethics Commission Opinion 02-02 – where the overlap of the work of the nonprofit is very close to the work of the City.

Other examples of conflicts can include legal disputes between the City and the nonprofit, nonprofits that may host election-related activities, or nonprofits that frequently hold community meetings relating to projects coming before mayor and council for votes.

Conclusion

Without knowing more relating to the ongoing business of the nonprofit and the matters that would come before the Board in this request, the City Ethics Commission cannot predict in advance whether a given situation would create such a conflict that precludes the Requestor from being on the Board. If the nonprofit has more than a tangential connection with Rockville, it may not be possible to manage the conflict through recusal and avoidance of activities such as fundraising or seeking gifts for the nonprofit. In those situations, the councilmember should not serve on the Board of the nonprofit.