



THE PRINCE GEORGE'S COUNTY GOVERNMENT BOARD OF ETHICS

Rushern L. Baker
County Executive

Robin Barnes-Shell
Executive Director

The Honorable Covette Rooney, Chair
Cassandra Burckhalter, Member
Anne Magner, Esq., Member
Addie Martin, Member
Norris Sydnor, Member

OPINION

March 13, 2014

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RE: Conflict of Interest

Dear [REDACTED]:

You have requested an opinion from the Prince George's County, Maryland (the "County") Board of Ethics on whether a conflict of interest arises from your role as Executive Director of the [REDACTED] and your wife's conduct of business as an interior decorator. You informed that due to the nature of your wife's business and the real estate development activities of the [REDACTED], it is very likely that development firms that bid on [REDACTED] contracts will have previously, currently and/or prospectively contracted for your wife's services. You also informed that as the [REDACTED] Executive Director you participate in all [REDACTED] procurement activities and inquired as to whether you should recuse yourself from these activities where your wife had, has or may have contracts with firms that bid on [REDACTED] solicitations.

Based upon the facts presented, the Board identifies three circumstances for consideration of conflicts of interest: 1) where a firm that bids on an [REDACTED] procurements contracted for your wife's services in the past ("Past Interests"); 2) where your wife presently has a contract with a firm that submits a bid on or obtains an [REDACTED] contract ("Present Interests"); and 3) where a firm already under contract with the [REDACTED] becomes an obligee of your wife ("Future Interests").

In sum, the Board finds that no conflicts of interest arise from your wife's Past Interest. The Board does find, however, that conflicts of interest arise from your wife's Present and Future Interests that preclude your participation in any matter relating to the firms that contract with your wife. However, based upon our analysis and consideration of the facts and circumstances of this inquiry, and under the authority vested in this Board under the County's Code of Ethics (the "Ethics Code"), the Board will allow your participation in such matters so long as your wife receives no benefit from any [REDACTED] contract.

Our detailed analysis follows.

Background

As we understand, your wife is an interior decorating professional who frequently contracts with architectural and similar firms for the provision of interior decorating services in the Washington, D.C. metropolitan area. You informed that your wife is currently a party to a contract with a firm who was recently awarded a contract competitively procured by the RDA. You also informed that your wife's contract with that firm is for services she provides on a non-RDA project in Washington, D.C. You stated that your wife does not provide any services on the firm's RDA contract. Also, as we understand, neither you nor your wife are officials or employees of said firm and neither of you have any interest, financial or otherwise, in or with said firm or its contract with the RDA.

Analysis

Section 15B-126 of the [REDACTED] enabling statute requires the [REDACTED] compliance with the Ethics Code. Section 2-291 of the Ethics Code defines the words "official" and "employee" as "any person elected to, appointed to, or employed by the County or any County agency, board, commission, or similar entity whether or not paid in whole or in part with County funds and whether or not compensated." As the Executive Director of the [REDACTED] is appointed pursuant to the [REDACTED] Charter, the Executive Director is indisputably a County official.

County officials are subject to the following relevant participation restrictions set forth in Section 2-293(a) of the Ethics Code.

Except as permitted by Board regulations or opinion, an official or employee may not participate in:

- (1) Any matter . . . if, to his knowledge . . . his spouse . . . has an interest therein.
- (2) Any matter, when any of the following is a party thereto:
 - ...
 - (B) Any business entity of which [his spouse] ... is an officer, director, trustee, partner, or employee;
 - (C) Any business entity with which [his spouse] is negotiating or has any arrangement concerning prospective employment;
 - (D) Any business entity which . . . the official or employee knows is a party to a contract with [his spouse], if the contract could reasonably be expected to result in a conflict between the private interests of the official or employee and his official duties;
 - (F) Any business entity which the official or employee knows is [the] creditor or obligee . . . of [his spouse] . . . with respect to a thing of economic value and which, by reason thereof, is in a position to affect directly and substantially the interest of [his spouse].

The Board's advice is based upon application of the foregoing Ethics Code provisions to your wife's Past, Present and Future Interests.

Past Interests

The participation prohibitions set forth above are not applicable to your wife's Past Interests because the Ethics Code is not applied retroactively. It is of no import that a firm that bids on or is awarded an [REDACTED] contract had a past business relationship with your wife.

Present Interests

Section 2-293(a)(1) above is applicable to your wife's Present Interests only if your wife has an interest in an [REDACTED] contract awarded to her client (for example as a subcontractor to the awardee). To the extent your wife provides any services on an [REDACTED] contract or receives any benefit from one, you are prohibited from participating in any matter related to that [REDACTED] contract. This includes but is not limited to contract administration, invoice processing, correspondence and close out. Similarly, if at any time your wife or her business is identified as a proposed subcontractor in a bid/proposal submitted in response to an [REDACTED] solicitation, the Ethics Code precludes your participation in the solicitation activities, including attending meetings, evaluating or discussing bids/proposals, voting on bids/proposals and recommending contract awards to [REDACTED] members. Your participation in any matter in which your wife or her interior decorating business has an interest is expressly prohibited by the Ethics Code and disallowed by this Board.

Also applicable to your wife's Present Interests are the provisions of Section 293(a)(2)(D) above. To the extent your wife is a party to a contract with a firm who bids on or is awarded an [REDACTED] contract, your participation in matters regarding such bid or contract is precluded if the contract between your wife and the [REDACTED] bidder/contractor could reasonably be expected to result in a conflict between your private interests and your official duties. Only to the extent it could, your participation in any matter involving the bid/contract is prohibited by the Ethics Code and disallowed by this Board even if neither your wife nor her business has, or will have, an interest in the firm's [REDACTED] contract. Thus, whenever the [REDACTED] does business with a firm that has a contract with your wife or her business, you may not participate in matters relating to that firm if you or anyone else reasonably expects that your wife's contract creates a conflict between your private interest and duties as Executive Director for the [REDACTED].

Finally, with respect to Present Interests, Section 2-293(a)(2)(F) applies to the facts of this inquiry because any firm with whom your wife has a contract is a legal obligee of your wife and can therefore affect her financial interests. Under such circumstances, which we understand to exist presently, the Ethics Code precludes your participation in matters regarding the firm's [REDACTED] contract.

That said, Ethics Code Section 2-293(a) excepts from its provisions participation permitted by an opinion of this Board. In accordance with this exception, the Board hereby permits your participation in matters regarding firms obliged to your wife, but only where the obligation arises from a project unrelated to an [REDACTED] project. Under those circumstances, your wife will not receive any benefit from her client's [REDACTED] contract. However, if at any time during the term of such firm's [REDACTED] contract your wife becomes a subcontractor on the [REDACTED] contract

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awarded her client, or receives any benefit whatsoever from such [REDACTED] contract, directly or indirectly, the permission granted herein is immediately revoked and your participation in any matter regarding such [REDACTED] contract will constitute a violation of the Ethics Code.

Future Interests

The prohibitions of Section 2-293(a)(2)(F) also arise from your wife's Future Interests, i.e., where an [REDACTED] contractor becomes obliged to your wife during the term of (as opposed to before obtaining) an [REDACTED] contract. In this instance, the firm becomes your wife's obligee while you may be participating in matters involving such firm. Such participation then becomes prohibitive under the Ethics Code. However, as with Present Interest, the Board hereby permits your participation in matters regarding firms obliged to your wife where the obligation arises from a project unrelated to an [REDACTED] project with the same caveats set forth above.

Disclosure

The Board advises you to disclose to the [REDACTED] members all of your wife's Present and Future Interests, as those terms are defined herein, as and when they arise. In the case of [REDACTED] solicitations, you are advised to make disclosures of Present Interests as soon as possible after the [REDACTED] receipt of the firm's bid.

Signature,

/s/ Covette Rooney

Covette Rooney
Board Chair