

*Stephan W. Fogleman, Chair*  
*Donna M. Davis, Vice-Chair*  
*Melodie Hengerer*  
*Arnold Sampson*  
*Vacant*



*Executive Director: Isabel Mercedes Cumming*  
*Director: Jeffrey Hochstetler*

**BALTIMORE CITY BOARD OF ETHICS**

**Baltimore City Board of Ethics**  
**Ethics Opinion 21-005**  
**(August 12, 2021)**

This opinion arises from a recent ethics complaint alleging a conflict of interest between a City public servant's<sup>1</sup> membership on the governing board of a private entity ("Entity A") and the public servant's City duties. There was no dispute that the public servant's agency at various levels exercised authority over certain interests of Entity A. Thus, unless an exception applied, the public servant ordinarily would be prohibited from being employed by—including sitting on the board of—Entity A. *See* § 6-11(1)<sup>2</sup> (in pertinent part, prohibiting a public servant from being employed by an entity "that is subject to the authority of [the] public servant *or of the City agency with which the public servant is affiliated*") (emphasis added); Ethics Opinion 21-004 (explaining that "employment" for purposes of Section 6-11 includes uncompensated membership on an entity's governing board).

However, the public servant contended they were serving on Entity A's board as a City representative, thereby qualifying for the relevant exception in Sections 6-9 and 6-15 ("service on the City's behalf"). That exception permits a public servant to hold an otherwise prohibited membership on an entity's board if:

- (1) the City has an economic or programmatic interest in the entity; and
- (2) the public servant:
  - (i) serves on the entity as part of his or her official duties, at the direction of his or her agency;
  - (ii) receives no fee, salary, or other remuneration for his or her service; and
  - (iii) does not participate in any matter in which the public servant or any disqualifying relative has a financial interest.

§ 6-9. *See also* § 6-15 (explaining that the restrictions on secondary employment do not apply to a public servant's board membership or trusteeship if it accords with Section 6-9).

---

<sup>1</sup> The term "public servant" includes all City officials and employees. City Code, Art. 8, § 2-23.

<sup>2</sup> Unless otherwise indicated, all citations are to the Baltimore City Public Ethics Law, contained in Article 8 of the City Code.

The question for the Ethics Board (“Board”) in considering the complaint was whether the public servant’s membership on Entity A’s governing board qualified as service on the City’s behalf. As explained more fully below, the Board determined it did not, and issues this advisory opinion to clarify the contours of the exception in Sections 6-9 and 6-15 for service on the City’s behalf.

In the circumstances that gave rise to the complaint, the public servant was asked by Entity A’s leadership to join Entity A’s board. The public servant informed immediate supervisors, who responded that it “would be good to have City representation” on Entity A and directed the public servant to use “common sense” and recuse as appropriate. Although this exchange may have justified the public servant in thinking that they served on Entity A’s board on the City’s behalf, the Board found it was insufficient to qualify for that exception. Accordingly, the Board required the public servant to either resign from Entity A’s board or suspend their board membership unless and until that membership qualifies as service on the City’s behalf.

The exception for service on the City’s behalf recognizes that the City’s interests may be served by representation on an entity’s board. If the City truly has an economic or programmatic interest in an entity, and if a public servant is serving on that entity’s board as part of their official City duties, then the public servant is not engaged in secondary employment but is instead serving the City. To the extent the interests of the entity and the City might conflict, the public servant’s loyalty must be to the City’s interests.

First and foremost, then, service on the City’s behalf applies only to entities in which the City truly has an economic or programmatic interest. § 6-9(1). Although the Ethics Code does not indicate how the City should determine whether it has such an interest in an entity, we think the existence of the interest must be established by the agency desiring representation in some formalized way. In other words, the agency desiring representation on an entity’s board must determine and document the agency’s economic or programmatic interest in the entity and the scope of the agency’s representation on that entity’s board. It is not sufficient for an official or employee to merely propose that serving on a board is part of the City’s economic or programmatic interest. It is also insufficient for an entity to unilaterally place a City public servant on its board, through its bylaws or otherwise.

Although the Board has not yet adopted regulations in this regard, the State Ethics Commission’s criteria for determining and delineating service on the State’s behalf are instructive. [See State Ethics Commission’s Secondary Employment Memo \(Aug. 22, 2019\)](#). As adapted for the City, those criteria are as follows:

- 1) The agency must determine that the goals and mission of the entity are clearly aligned with those of the agency;
- 2) The agency must determine that its mission is enhanced by a City public servant’s participation on the entity’s governing board;
- 3) The position held by the City public servant on the entity’s board must be designated by the entity as for a City public servant.<sup>3</sup>

---

<sup>3</sup> An entity’s unilateral decision to place a City public servant on its board—through its bylaws or otherwise—is insufficient to establish service on the City’s behalf.

- 4) The public servant's continued service on the City's behalf and the amount of City time and resources committed to that service must be appropriate and proportionate to the City's interests; and
- 5) The public servant must not participate in any actions or take any positions contrary to an officially defined position of the agency or the City.

Requiring the agency desiring representation on an entity's board to formally make these determinations and delineations helps to ensure that service on the City's behalf is not loosely or inappropriately applied to entities that do not hold economic or programmatic interest for the City. And documenting these interests and delineations serves the interests of transparency by making it easier for members of the public to ascertain whether a City public servant sits on an entity's board as a City representative serving the City's interests.<sup>4</sup>

In addition to formally establishing the City's interest in an entity, the agency desiring representation on that entity's board must ensure the other requirements for service on the City's behalf are met—namely, that the agency representative is uncompensated by the entity and that they represent the agency as part of their official duties, at the agency's direction. § 6-9(2). Accordingly, the agency should take care to designate a person whose job description would permit such service, and should document that designation.

Finally, any public servant serving on the City's behalf must adhere to all other relevant ethics provisions. Specifically, the public servant must not participate in fundraising activities on behalf of the entity and must not use their official City position for the private gain of the entity. *See* §§ 6-26, 6-27, and 6-36. In addition, the public servant must adhere to the Ethics Law's prohibition on the use of confidential information, Section 6-37, and must not participate in any matter in which they or a disqualifying relative has a financial interest, Section 6-9(2)(iii).

Baltimore City Board of Ethics

*Stephan W. Fogleman, Chair*

*Donna M. Davis*

*Melodie Hengerer*

*Arnold Sampson*

---

<sup>4</sup> A formal determination of service on the City's behalf could take different forms. For example, if by law a specific City official or their designee serves on an entity's governing board in an *ex officio* capacity, the City's economic or programmatic interest in that entity is presumed. Short of legislative enshrinement, the City's economic or programmatic interest in a particular entity might be detailed in an agreement between an agency head and that entity or some other formalized policy document.