



BALTIMORE CITY BOARD OF ETHICS
Ethics Opinion 11-002
(August 11, 2011)

A City public servant (the “Official”) has requested an opinion from the Ethics Board about the extent to which the City Ethics Code requires the Official to recuse from certain matters because of the employment status of family members. The Official’s spouse works as an adjunct professor in a particular program at an area university and the Official has a child that is employed in a classroom in the Baltimore City Public Schools (BCPS).

The City’s Ethics Code requires public servants to refrain from participating in any matter that, given several enumerated factors, could create a conflict of interest for them. At issue here is the specific prohibition on participation when a business entity that employs a close relative has an interest in a matter, City Code Article 8, § 6-6(3)(ii)(B) . The central question is how the Ethics Code treats employment at a specific site or division of a larger conglomeration.

City Code Article 8, § 6-6 {Prohibited Participation} reads in relevant part, “Except as otherwise provided in this Part II, a public servant may not participate in and must disqualify himself or herself from any matter if...any of the following is a party to the matter: ... any business entity in which...to the public servant’s knowledge, a disqualifying relative is a partner, officer, director, trustee, employee, or agent”. Both spouses and children are “disqualifying relatives”¹. “Business entity” in turn is defined as “any person engaged in business or other organized activity, whether for-profit or not-for-profit and regardless of form” (§2-4), while §2-22 defines “person” as:

- “(1) an individual;
- (2) a partnership, firm, association, corporation, or other entity of any kind;
- (3) a receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind; and
- (4) except as used in Subtitle 9 {“Enforcement”} of this article for the imposition of criminal penalties, a governmental entity or an instrumentality or unit of a governmental entity”.

¹ Ethics Code §6-1(b) states that “ “Disqualifying relative”, as applied to an individual, means that individual’s spouse, parent, child, or sibling.”



Therefore, on a first reading of the Ethics Code it would seem clear that the public servant requesting this Opinion must recuse from any matter relating to either the university where the spouse is employed or the City school system where the child is employed. Both spouses and children are disqualifying relatives, both schools are covered by the definition of “business entity” since that definition specifically includes non-profits, and both relatives are paid employees of those schools.² However, recent public advice from the City Solicitor to the Mayor may have resulted in some confusion about when an individual’s employer is considered to be a particular sub-unit of a conglomeration and when, instead, the conglomeration as a whole is properly seen as the individual’s employer. It is important that this confusion be resolved.

To the extent that there is any ambiguity in the Ethics Code on this point it arises from the phrase “or other entity of any kind” in the Code’s definition of “person”. The word “entity” in this phrase has been interpreted in the past by the Ethics Board to essentially mean “a single legal unit”. A brief discussion of the advice given to the Mayor makes this point clear. In the Mayor’s case, her husband works for a wholly owned subsidiary of the Johns Hopkins Health System. Because of this, the Mayor requested advice from the City Solicitor on whether she had to recuse herself from matters involving Johns Hopkins as a whole, the Johns Hopkins Health System (JHHS), or simply the subsidiary (Johns Hopkins Community Physicians (JHCP)) for which her husband works. The Solicitor reviewed and concurred with informal advice previously issued by the Ethics Board’s Executive Director to another official in a similar, but unrelated, situation. Based on this earlier advice, the Solicitor correctly advised the Mayor that, since JHCP is legally a separate corporation from JHHS, the Ethics Board would likely only require her to recuse herself from matters involving JHCP. JHCP and JHHS are not a single legal unit because JHCP is separately incorporated; JHCP has a distinct corporate governing board, and JHHS is not directly responsible for the debts or actions of JHCP.

In the current matter, the relationship of the larger educational conglomerations to the individual schools where the Official’s family members work is quite different. The Baltimore City Public Schools and the university in question are each an integrated entity. The individual schools do not have a separate legal existence. A particular public school cannot enter into contracts on its own, it relies on the credit of the school system as a whole, it must adhere to policies and procedures set centrally for the entire school system, and if someone is injured at the school the system as a whole could be sued. The same holds true for the departments or schools that make up a single university.

Accordingly, it is the Opinion of the Ethics Board that, since the definition of a “business entity” for purposes of Ethics Code § 6-6 {Prohibited Participation} encompasses the entirety of a conglomeration considered a single legal entity and is not limited to a particular site, division, or other sub-unit unless the sub-unit has a separate legal existence from the larger conglomerate, the requesting public servant must recuse from all matters that either the university where the spouse works or BCPS is a party to.

² There was some question as to whether or not an adjunct professor should be considered a university employee, as distinct, for example, from an independent contractor. However, the university in question confirmed that it treats adjunct professors as employees for tax and other purposes.