



**BALTIMORE CITY BOARD OF ETHICS**  
**Ethics Opinion 11-003**  
**(November 14, 2011)**

You have requested our opinion on the extent to which the City Ethics Code requires the you, when acting as a member of the Board of Estimates, to recuse yourself from certain matters that (i) involve entities that employ certain “disqualifying relatives”, or (ii) involve or relate to your other legislative and executive duties.

**“Disqualifying Relatives”**

Your first 5 questions involve the employment of “disqualifying relatives” by a private or governmental entity. Situations of this sort were recently reviewed in Ethics Opinion 11-002. To summarize:

City Code Article 8, § 6-6(3)(ii) (“Prohibited Participation”) provides in relevant part that “a public servant may not participate in and must disqualify himself or herself from any matter if ... a party to the matter [is a] *business entity* in which[,] ... to the public servant’s knowledge, a *disqualifying relative* is a partner, officer, director, trustee, employee, or agent”.

For these purposes, “disqualifying relative” is defined to mean one’s “spouse, parent, child, or sibling” {Art. 8, § 6-1(b)}.

“Business entity” is defined broadly to mean “any *person* engaged in business or other organized activity, whether for profit or not-for-profit and regardless of form” {Art. 8, § 2-4}. “Person”, in turn, is defined to include “a governmental entity or an instrumentality or unit of a governmental entity” {Art. 8, § 2-22}. In short, the requirement to recuse oneself goes beyond a relative’s employment with private enterprises; rather, it also applies to a relative’s employment with City agencies.

And, in this regard, it has long been the understanding and practice of the Ethics Board (as well as, we might add, the State Ethics Commission), to treat agencies as a unified whole. *Cf.* Op. 11-002 (“§ 6-6 ... encompasses the entirety of a conglomeration considered a single legal entity”.) Finally, for purposes of § 6-6, the law does not distinguish among various types or levels of employment; that is to say, the section extends to any “employ[ment]”, whether managerial or ministerial.



We turn now to the 5 specific situations:

1. A disqualifying relative works as a laborer for a bureau within one of the City's principal Departments.

Recusal required for all matters involving any of that Department's bureaus or other units.

2. A disqualifying relative handles grievances in a hybrid, Federal-State-City Agency.

Recusal required for all matters involving any of that Agency's Divisions or other units.

3. A disqualifying relative works as scheduler/coordinator at a local hospital.

Recusal required for all matters involving any of that hospital's departments or other units.

4. A disqualifying relative is employed by a unit of the Mayor's Office of Information Technology.

Recusal required for all matters involving any of MOIT's units.

5. A disqualifying relative is a teacher at a local Head Start Center.

Recusal required for all matters involving that Head Start Center.

**But Note:** Recusal is *not* required for matters involving other Head Start Centers or for the Head Start Program generally.

### **Legislative and Other Matters**

You've also posited a series of situations involving "conflicts" with your legislative and executive duties.

We note at the outset that, unlike matters involving "disqualifying relatives", these other situations do not implicate your own *personal* interest or those of any relative of yours. Moreover, these other situations (described below) must be viewed in the light of your status on the Board of Estimates, like all of its members, as a Charter-designated, *ex officio* member.

The Ethics Code has long recognized that dual service of this sort, even if not *ex officio*, might well warrant an exception to the recusal requirements of § 6-6. Specifically, Art. 8, § 6-9 {"Service with entity on City's behalf"}, provides:

The prohibitions in § 6-6 {"Prohibited participation"} of this subtitle do not apply to the service of a public servant as a trustee or director of a business entity doing business with or subject to regulation by the City as long as:

- (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.

More so in cases like yours, where the additional service is pursuant to an *ex officio* designation created by law. An *ex officio* member is designated "by virtue of the office" – that is, he or she is selected *precisely because of* his or her office. His or her office is the *raison d'être* for the *ex officio* position. As such, an *ex officio* member could be expected to bring his or her expertise to the *ex officio* position and not be required to recuse him- or herself whenever that expertise is most needed.

Consider, for example, the Director of Public Works, who also serves on the Board of Estimates as a Charter-designated, *ex officio* member. It is inconceivable to us that the Public Works Director would be expected, let alone required, to recuse himself on every DPW contract or other transaction coming to the Board for approval. (*Cf. also, e.g.*, Charter Article VII, § 71(a), calling for the City Council to elect one of its members to serve on the Planning Commission. Must that member recuse him- or herself on all matters that ultimately will be presented to the Council for its action? We think not.)

Accordingly, we advise as follows:

6. Transactions and agreements brought to the Board of Estimates by your Office.

Recusal *not* required (unless, of course, you or a disqualifying relative has an interest of the kind described in Art. § 6-6).

7. Transactions and agreements brought to the Board of Estimates by individual Councilmembers.

Recusal *not* required (unless, of course, you or a disqualifying relative has an interest of the kind described in Art. § 6-6).

8. Travel requests brought to the Board of Estimates by individual Councilmembers.

Recusal *not* required (unless, of course, you or a disqualifying relative has an interest of the kind described in Art. § 6-6).

9. Supplementary Appropriations brought to the Board of Estimates.

Recusal *not* required (unless, of course, you or a disqualifying relative has an interest of the kind described in Art. § 6-6).

10. Pending legislation for which the City Council has requested a Report.

Recusal *not* required (unless, of course, you or a disqualifying relative has an interest of the kind described in Art. § 6-6).

11. Contracts, agreements, or legislation that affect boards or commissions on which you serve.

If you are an *ex officio* member of the board or commission (i.e., your appointment is mandated by law), recusal *not* required (unless, of course, you or a disqualifying relative has an interest of the kind described in Art. § 6-6).

If your service on the board or commission comports with the exception in Art. 8, § 6-9 (quoted above), recusal *not* required (unless, of course, you or a disqualifying relative has an interest of the kind described in Art. § 6-6).

In all other cases, recusal required.

We trust that the preceding has been fully responsive to your request. If not, or if you have any other questions, please do not hesitate to let us know.