

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**



Office of Government Ethics

VIA US MAIL TO:

July 10, 2013

Mr. Peter Sacco
2100 Eye Street, N.W. #206
Washington, D.C. 20052

Dear Mr. Sacco:

This responds to your request for advice concerning whether you are required to recuse yourself from Advisory Neighborhood Commission (“ANC”) 2A matters relating to George Washington University (“GWU”) given that you are a GWU House Staff member who receives a \$4,750 stipend for the academic year and a free furnished room in the hall you oversee, the value of which is approximately \$10,000 for the academic year. Based on the information you provide in your letter, dated July 1, 2013, and received on July 8, 2013, I have determined that you are required to recuse yourself from all matters relating to GWU that come before you as an ANC 2A Commissioner.

In your letter, you state that you are an ANC 2A Commissioner for the Foggy Bottom and West End neighborhoods. You state that you also are a student at GWU and serve as a House Staff member. As a House Staff member you organize events for the on-campus residence hall you oversee, mentor students living in the hall, provide advice to them regarding university resources, and serve as the point of contact for the University Police department for any University code violations. You state that you are paid a small stipend of \$4,750 for the academic year for being a House Staff member and that the stipend is distributed to you in regular, biweekly paychecks. You state that you also receive a free furnished room in the hall you oversee, which normally costs approximately \$10,000 for the academic year.¹ Because you receive compensation from GWU totaling approximately \$14,750 for your services as a House Staff member, your position with GWU essentially is outside employment (receiving a fee for services from a private entity).

The Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (“Ethics Act”), effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 (2012 Supp.)) includes Conflict of Interest provisions that are applicable here. Specifically, D.C. Official Code § 1-1162.23(a) states:

No employee shall use his or her official position or title, or personally and substantially participate, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter, or attempt to influence the outcome of a particular

¹ You state that you have received a significant amount of financial aid from the university and a significant portion of both the stipend and the free housing cost are deducted from your yearly financial aid package, both of which are counted as personal income to you, in the eyes of GWU.

matter, in a manner that the employee knows is likely to have a direct and predictable effect on the employee's financial interests or the financial interests of a person closely affiliated with the employee.

The Ethics Act definition of "person closely affiliated" (D.C. Official Code § 1-1161.01(43)) includes "affiliated organization," which is defined as one in which a person serves as an "officer, director, trustee, general partner, or **employee**." D.C. Official Code § 1-1161.01(3)(A)(i). The question then is whether, as an employee of GWU, your ANC duties could have a "direct and predictable effect" on the financial interests of GWU. As you state in your letter, the ANC's "consider a wide range of policies and programs affecting their neighborhoods, including traffic, parking, recreation, street improvements, liquor licenses, zoning, economic development, police protection, sanitation and trash collection, and the District's annual budget." In addition, you state that the "ANCs present their positions and recommendations on issues to various District government agencies, the Executive Branch, and the Council. They also present testimony to independent agencies, boards, and commissions"

Insofar as GWU is, as you state, the largest land-owner in your ANC area, it is likely that many of the items you list above will either overlap or touch upon the University or its financial interests. Like all universities, GWU seeks to attract the most highly qualified applicants, and a campus setting in an upscale neighborhood -- a neighborhood which the ANC constantly works to improve -- could certainly be considered a selling point. Moreover, it is generally known that aside from its teaching functions, GWU also owns and administers commercial property in the Foggy Bottom neighborhood, and factors such as street improvements, zoning, sanitation, and the like could have a financial impact on these interests including, for instance, property valuation. From this I conclude that when matters relating to GWU come before ANC 2A, it is likely that your ANC duties could have a direct and predictable effect on the financial interests of GWU.

Recusal

Although nearly everyone who works for the District (whether for pay or without) falls within the conflict of interest provision set out above, there are differences in the way a regular employee is treated compared with an employee who is also considered an elected official. For instance, though recusal is the proper method to deal with a conflict, an employee other than an elected official may be eligible for a waiver from the Ethics Board in certain circumstances. (Ethics Act § 223(b); D.C. Official Code § 1-1162.23(b)). No such waiver is available to an elected official.

The procedures and reporting obligations associated with recusal are somewhat different as well depending on classification. For instance, in the case of an elected official, the Ethics Act states:

Any elected official who, in the discharge of the elected official's official duties, would be required to act in any matter prohibited under subsection (a) of this section shall make full disclosure of the financial interest, prepare a written statement describing the matter and the nature of the potential conflict of interest, and deliver that statement to . . . the Ethics Board." (Ethics Act § 223 (c)(1); D.C. Official Code § 1-1162.23 (c)(1)).

Moreover, D.C. Official Code § 1-1162.23(c)(3) states:

During a proceeding in which an elected official would be required to take action in any matter that is prohibited under subsection (a) of this section, the Chairman shall: (A) Read the statement provided in paragraph (1) of this subsection into the record of proceedings; and (B) Excuse the elected official from votes, deliberations, and other actions on the matter.

The question is whether ANC Commissioners are considered “elected officials.” The term “elected official” is not specifically defined in the Ethics Act. The term “Election” is defined as “a primary, general, or special election held in the District of Columbia for the purpose of nominating an individual to be a candidate for election to office, or for the purpose of electing a candidate to office, or for the purpose of deciding an initiative, referendum, or recall measure, and includes a convention or caucus of a political party held for the purpose of nominating such a candidate.” D.C. Official Code § 1-1161.01(15). To the extent that ANC Commissioners are selected through this process, they are, in my view, clearly elected officials and should follow the recusal procedures set out above. Therefore, you are required to recuse yourself from all ANC 2A matters that concern GWU.

Please be advised that this advice is provided to you pursuant to section 219 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (“Ethics Act”), effective April 27, 2012, D.C. Law 19-124, D.C. Official Code § 1-1161.01 *et seq.*, which empowers me to provide such guidance. As a result, no enforcement action for violation of the District’s Code of Conduct may be taken against you in this context, provided that you have made full and accurate disclosure of all relevant circumstances and information in seeking this advisory opinion, further assuming that you abide by the restrictions outlined above.

Finally, you are advised that the Ethics Act requires this opinion to be published in the District of Columbia Register within 30 days of its issuance, but that identifying information will not be disclosed unless and until you consent to such disclosure in writing, should you wish to do so.

Please let me know if you have any questions or wish to discuss this matter further. I may be reached at 202-481-3411, or by email at darrin.sobin@dc.gov.

Sincerely,

A handwritten signature in dark ink, appearing to read "Darrin P. Sobin", is written over a horizontal line.

DARRIN P. SOBIN
Director of Government Ethics
Board of Ethics and Government Accountability

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