

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

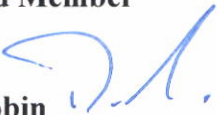



Office of Government Ethics

MEMORANDUM

TO: Robert J. Spagnoletti
Chairman, Board of Ethics and Government Accountability (Ethics Board)

Deborah Lathen
Ethics Board Member

THROUGH: Darrin P. Sobin 
Director of Government Ethics

FROM: Brian K. Flowers 
General Counsel

DATE: August 14, 2015

RE: Department of General Services Request for Opinion Regarding Potential
Conflict and Request for Waiver of Any Potential Conflict

This responds to the August 12, 2015 memorandum of Camille D. Sabbakhan, General Counsel of the Department of General Services, in which she requests a determination as to whether a conflict of interest exists under DC Official Code § 1-1162.23, as to a specific matter handled by a DGS attorney and if so determined, to request a waiver of any potential conflict of interest.

Based upon the information provided in her memorandum, I conclude that the DGS attorney would be participating in a particular matter which is likely to have a direct and predictable effect on the financial interests of a person closely affiliated with the employee, but that the interest is not so substantial as to be deemed likely to affect the integrity of the services that the government may expect from the employee. I recommend that the Board grant the waiver requested.

Background

The memorandum states that the Department of General Services (DGS) is currently engaged in the development of the new soccer stadium at Buzzard Point (the Soccer Stadium Development). In connection with the Soccer Stadium Development, the District will likely condemn a parcel of

property owned by SW Land Holder, LLC.¹ The DGS attorney at issue, from 2000 through 2010, represented the National Electrical Benefit Fund (NEBF), an affiliate that is a member of SW Land Holder, LLC. The DGS attorney represented NEBF in negotiating its loan and joint venture documents, not with respect to any condemnation or litigation matters (and specifically not with respect to the condemnation of land at Buzzard Point).

The DGS attorney's domestic partner currently represents NEBF and its affiliates with respect to tax and equity investment matters. Neither the domestic partner nor his law firm represents SW Land Holder, LLC, nor do they represent NEBF in connection with the condemnation matter. The domestic partner's law firm does not handle condemnation or litigation matters and he has no involvement in the condemnation matter. SW Land Holder, LLC has retained a law firm specifically for the condemnation matter. Additionally, while the DGS attorney is involved in the matter for the District, it is the Office of the Attorney General (not DGS) that will actually initiate, pursue and effect the condemnation.

The DGS attorney has disclosed the potential conflict to DGS, through the attorney's immediate supervisor, in a written statement. Additionally, the DGS attorney has consulted the DC Bar for guidance through its ethics hotline, and the DC Bar opined verbally that no *legal* conflict of interest exists. Based on these facts, DGS concluded that no government ethics conflict of interest exists because (1) no legal conflict of interest exists under the DC Rules of Professional Responsibility, and (2) the DGS attorney's participation in the condemnation matter is not at all likely to have any direct and predictable effect on the DGS attorney's financial interest or the domestic partner's financial interest. Finally, DGS requests that if the Board finds a conflict of interest, that it waive the conflict in accordance with D.C. Official Code § 1-1162.23(b).

Discussion

Section 223(a) 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 19-24; D.C. Official Code § 1-1161.23(a), provides that:

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 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.* (Emphasis added).

"Person closely affiliated with the employee" is defined to include a spouse, dependent child, general partner, a member of the employee's household, or an affiliated organization.² A domestic partner is included as a member of the employee's household, and an "affiliated

¹ See, District of Columbia Soccer Stadium Development Act of 2014, effective March 11, 2015 (D.C. Law 20-233; 62 DCR 438)(authorizing the Mayor to assemble the soccer stadium site including through the use of eminent domain).

² D.C. Official Code § 1-1161.01(43).