



## **City of Rockville Ethics Commission**

### **ADVISORY OPINION 18-01**

**January 17, 2018**

#### **Request**

A current member of the Ethics Commission has requested an advisory opinion pursuant to § 16-3(i) of Chapter 16 of the Rockville City Code (the “Ethics Ordinance”). The requestor resides in the Twinbrook neighborhood of the City of Rockville (the “City”) and has requested an opinion on whether any provision of the Public Ethics Ordinance would prohibit the requestor from serving as an officer of the Twinbrook Citizens Association, Inc. (the “Association”).

According to the Bylaws of the Association, the purpose of the Association “is to maintain and improve the quality of life of the residents of the Twinbrook area.” The Association is not affiliated with any governmental entity. Members, except for “Honorary Members,” who are not entitled to hold office, are required to reside or own property in the Twinbrook area. The members of the Association annually elect six officers: a President, Vice-President, Secretary, Treasurer, Member-at-Large North, and Member-at-Large South. Officers serve one-year terms and may be re-elected. All officers of the Association are unpaid volunteers. Along with adopting an annual budget and maintaining the financial viability of the Association, the main duties of the officers include: (i) determining the policy of the Association; (ii) arranging for the implementation of the policy; (iii) hearing citizen opinions and taking appropriate action; (iv) monitoring governmental activity; (v) taking positions on issues that affect the community at large; and (vi) ensuring the publication of positions taken and the dissemination of other pertinent information.

The requestor wants to know if any provision of the City’s Ethics Ordinance would prevent the requestor from serving as an officer of the Association.

Based on the facts presented, the Ethics Commission (the “Commission”) advises that no provisions in the Ethics Ordinance would prevent the requestor from serving as an officer with the Association.

#### **Discussion**

##### **Qualifications to Serve as Ethics Commissioner**

The Ethics Ordinance sets forth the qualifications that each member of the Commission must meet to serve on the Commission. Among the qualifications, the Ethics Ordinance states that “[d]uring the member’s term of office the member must not: (A) Hold or be a candidate for any state, county or local elected or appointed office; (B) Be an employee of the state, a political

subdivision of the state or a public body created by the state or a political subdivision of the state.” City Code, § 16-3(b)(2).

The requestor seeks an interpretation of the qualification provision to determine whether it would be permissible for the requestor to remain on the Ethics Commission and hold an elected officer position with the Association.

The Commission is of the opinion that the use of “elected or appointed office” in § 16-3(b)(2)(A) is a reference to government-related offices, and not to an elected or appointed office with a community association. The term “elected or appointed office” is qualified by the phrase “state, county or local.” City Code, § 16-3(b)(2)(A) (“During the member’s terms of office the member must not [[h]old or be a candidate for *any state, county or local elected or appointed office.*” (emphasis added)). Further, Subsection (b)(2)(B), which places further qualifications on Ethics Commissioners, prohibits an Ethics Commissioner from being an employee of the state, a political subdivision of the state, or a public body created by the state or a political subdivision of the state.

Construing § 16-3(b)(2) in totality demonstrates a legislative intent to prohibit and prevent Ethics Commissioners from being elected officials, appointed officials, and employees of other state and local governmental entities. Section 16-3(b)(2) does not prohibit or prevent an Ethics Commissioner from holding an elected or appointed office in a non-governmental organization.

#### Employment Restrictions

As previously indicated in Advisory Opinion 17-01, the statutory scheme does not prohibit a person who is subject to the Ethics Ordinance to engage in uncompensated volunteer activities.

The Commission’s analysis employed in Advisory Opinion 17-01 is applicable in the current situation. In that opinion, the Commission stated:

Section 16-27(a) of the Public Ethics Ordinance provides that “[e]xcept when such interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict and as permitted by Commission regulation, an elected or appointed official or salaried employee (decision-making or nondecision-making) may not (1) be employed by, or have a financial interest in, any entity subject to his authority or that of the City agency, board, or commission with which he or she is affiliated or any entity which is negotiating or has entered into a contract with that agency, board, or commission, or (2) hold any other employment relationship which would impair his/her impartiality or independence of judgment.”

The Public Ethics Ordinance defines “*employment*” to mean “any occupation, trade, or profession **for which a person receives compensation** from another person for private, as opposed to governmental, services rendered.” City Code, § 16-1 (emphasis added). The term “*interest*” is defined as “any legal or equitable economic

interest, whether or not subject to an encumbrance or condition, which was owned or held, in whole or in part, jointly or severally, directly or indirectly.” *Id.*

Ethics Commission Advisory Opinion 17-01 (emphasis in original).

Based on the definitions contained in the Ethics Ordinance, any uncompensated volunteer activities by the requestor on behalf of the Association would neither be “employment” nor constitute an “interest” that implicates § 16-27(a). As used in the Ethics Ordinance, the term “employment” does not cover uncompensated services rendered to a person or entity. The term “interest” contemplates a legal or equitable ownership interest in an entity – neither of which are present if the requestor were to serve as an officer of the Association. As such, § 16-27(a) does not prevent the requestor from serving as an uncompensated officer of the Association.

#### Other Applicable Provisions

The Ethics Commission has not identified any other provision of the Ethics Ordinance that would expressly prevent the requestor from serving as an uncompensated officer of the Association.

#### Conclusion

For the foregoing reasons, the Commission advises the requestor that no provisions in the Ethics Ordinance would prevent the requestor from serving as an officer with the Association.