

City of Salisbury Ethics Commission

Opinion Request Number: 2024-01

Date of Opinion: March 14, 2024

Issue & Answer:

1. May the Deputy City Administrator serve as a volunteer member of the Salisbury Fire Department? **No.**

Facts: Requestor seeks guidance on whether the Deputy City Administrator may serve as a volunteer member of the Salisbury Fire Department. The current Deputy City Administrator retired from the Salisbury Fire Department after being employed by the Department for thirty years, including nineteen years as a senior manager with the last five as Fire Chief. Prior to retiring from the Department, he was selected by Mayor and Council to be the Deputy City Administrator.

Pursuant to § SC4-1 of the City Charter, there shall be a City Administrator in the Office of the Mayor who shall be the Chief Administrative Officer of the City. The City Administrator shall be the direct subordinate of the Mayor and the immediate supervisor of each of the following department heads: Police Department, Fire Department, Department of Finance, Department of Human Resources, and the Public Information Officer. The City Administrator shall also be the immediate supervisor of the Deputy City Administrator. Pursuant to that same Charter provision, the Deputy City Administrator shall be the immediate supervisor of the following department heads: Department of Infrastructure and Development, Department of Field Operations, Department of Water Works, Department of Housing and Community Development, Department of Procurement and Department of Business Development. If the City Administrator is unable to act, the Deputy City Administrator shall fill his or her role.

After retiring from the Fire Department, the Deputy Administrator submitted his application for volunteer membership to the Fire Department. The Salisbury Fire Department consists of career and volunteer members. The volunteer members belong to one of two separately incorporated not for profit corporations: The Salisbury Fire Department, Incorporated ("Station 16") and Salisbury Fire Company, No. 2, Inc. ("Station 2"). All applications for volunteer membership, including the Deputy Administrator's pending application, are reviewed by the Personnel Board of non-profit volunteer corporations, who has the discretion to grant or deny volunteer membership. The Personnel Board is comprised of four members of the non-profit volunteer corporations. The Fire

Chief does not sit on the Personnel Board, although the Fire Chief works closely with the Board.

As an integrated fire and emergency medical services system, all volunteer members are required to maintain training, proficiency and participate in both fire and medical services. Conditions of volunteer membership consist of, *inter alia*:

- Providing a minimum of thirty-six (36) hours per month of assigned in-station duty time;
- Not missing more than one (1) quarter of in-station duty requirement in a rolling calendar year; and
- Participating in twenty-four (24) hours of hands-on Company training/drills annually.

Volunteer membership has significantly dwindled over the years given the strict and rigorous membership requirements and because many volunteer members use volunteer membership as an opportunity to become career employees.

All volunteer members of the Fire Department report to the Deputy Chief of Volunteer Services, who reports to the Fire Chief. The Fire Chief oversees and administers the fire budget, which is separated into a career budget, (roughly \$11.5 million a year) and a volunteer budget (roughly \$400,000 a year).

Pursuant to § SC4-5, the City Administrator supervises the preparation of the City budget. The Deputy City Administrator does not have final approval over the budget. As part of the volunteer budget, Station 2 and Station 16 each receive \$40,000 to purchase items for the benefit the Department. The remainder of the volunteer budget is to pay for physicals for the volunteers, contribute to a widow's fund, provide for other fringe benefits like a Holiday dinner, and to contribute to the Length of Service Awards Program ("LOSAP"). In 1991, the City established LOSAP to provide a benefit to the retired volunteer members of the Fire Department in recognition of their years of service. The majority of the volunteer budget is to fund LOSAP.

After a volunteer member successfully completes his/her first year of probation, he/she has a vote on how the volunteer budget is spent and the opportunity to sit on the non-profits' boards and committees, including the Personnel Board. The Personnel Board, as previously mentioned, has the discretion to grant or deny membership to new members. The Personnel Board's decision whether to grant or deny membership rests principally on safeguarding the citizens who find themselves in need of emergency services. It is clear the Deputy City Administrator meets the standard of care required for volunteer

membership. The issue, however, is whether there is a conflict (real or potential) or the appearance of a conflict of interest based upon the Deputy City Administrator's dual role as the Deputy City Administrator, on the one hand, and volunteer member, on the other.

Analysis: In Opinion 2023-01, this Commission was asked whether a City employee (either part- or full-time) may be appointed to a City Board, Committee, or Commission. To become a member of a City Board, Committee, or Commission, one must submit an application to the City and be appointed by the Mayor and approved by Council. Station 2 and Station 16 are not considered a City Board, Committee, or Commission because they are separately incorporated not for profit corporations, which operate pursuant to their own By-Laws and membership, which is determined by the Personnel Board (and not the Mayor and Council). Despite being separately incorporated, Station 2 and Station 16 derive virtually all of their funding from the City and, pursuant to the chain of command, are ultimately subject to the authority of the Fire Chief.

This Commission finds that, despite the differences and similarities between Station 2 and Station 16, on the one hand, and City Boards, Committees, and Commissions, on the other, Opinion 2023-01 is instructive. In Opinion 2023-01, this Commission opined that a conflict of interest may arise from an employee serving on a City Board, Committee, or Commission by virtue of his or her "prestige of office." Section 2.04.050(e) of the Ethics Code, which governs "prestige of office," provides:

- (1) An official or employee may not intentionally use the prestige of the office or public position for the private gain of that official or employee or the private gain of another. The prohibitions of this section include, but are not limited to:
 - (i) The use of influence in the award of a City contract to a specific person or entity;
 - (ii) Initiating a solicitation for a person to retain the compensated services of a particular lobbyist or firm;
 - (iii) Using public resources or title to solicit a political contribution regulated in accordance with the Election Law Article of the Annotated Code of Maryland.
- (2) This subsection does not prohibit performance of usual and customary constituent services by an elected local official without additional compensation.

(2.04.050(e)).

This Commission opined in Opinion 2023-01 that, although conflicts related to the use of prestige of office are not always readily apparent, they may

likely arise during the course of a City employee's tenure on a City Board, Committee, or Commission. Because of the potential for conflicts to arise with a City employee holding a Board, Committee, or Commission appointment or membership simultaneously, this Commission recommended that no employee (whether part- or full-time) be appointed to sit on any City Board, Committee, or Commission.

In this instance, given the need for non-profit volunteers and benefits of philanthropic service, this Commission does not recommend a bright line rule prohibiting membership by a City employee on a separately incorporated not for profit corporation whose sole purpose is to exclusively support a function, service, or benefit provided by the City. Rather, the Commission offers its opinion based upon the specific facts presented. In the case *sub judice*, the dual role of Deputy City Administrator and volunteer member of the Fire Department could raise conflict of interest issues. Even if the Deputy City Administrator did not misuse or abuse the prestige of his office, (and there is no indication or belief he would), at a minimum, this Commission finds there is an appearance of a conflict of interest based upon the dual role.

The influence of the Deputy City Administrator's prestige of office, even if unintentional, is at play starting with the application process itself. The Personnel Board, which is vested with complete discretion to grant or deny membership, may not be able to utilize that discretion for fear of reprisal, if volunteer membership to the Deputy City Administrator is denied.

If volunteer membership were granted to the Deputy City Administrator, it is probable, if not likely, the Fire Chief will, at some point, report to the Deputy City Administrator. Although the City Administrator is the immediate supervisor of the Fire Chief, if, at any time the City Administrator is unable to act, such as when the City Administrator is on vacation, the Deputy City Administrator shall fill his or her role. In all instances, the volunteer member is subordinate to the Fire Chief, but, here, given the dual role, that is not the case, which could potentially cause a conflict of interest or, at a minimum, give the appearance of a conflict. This potential for a conflict of interest or appearance of a conflict is not limited to within the Fire Department itself, but rather across all City departments. Even if unfounded, other City Departments may claim, for example, the Fire Department receives preferential treatment in terms of funding because the Deputy City Administrator is a volunteer member of the Fire Department.

Moreover, volunteer members of the City's Fire Department receive tangible benefits for membership, including qualifying for State and City tax benefits and the potential for a stipend. This Commission, in Opinion 2023-03, opined on the issue of secondary or dual employment and having sufficient safeguards in place so that there is no conflict (real or potential) or the appearance of a conflict of interest.

In sum, in light of this Commission's past Advisory Opinions, and the unique dual relationship between the Deputy City Administrator, on the one hand, and a volunteer member of the Fire Department, on the other, the Commission believes that the Deputy City Administrator should not simultaneously serve as a volunteer member of the Salisbury Fire Department.

Application: The City Ethics Commission cautions that this Opinion is applicable only to the request described herein. This Opinion should not be considered to be binding indefinitely. The passage of time may result in amendment to the applicable law and/or developments in the area of ethics generally or in changes of facts that could affect the conclusion of the Commission. This Opinion is intended to serve as a general guide for persons subject to the Ethics Code and members of the public, but is not intended to address the innumerable factual possibilities which may arise.