

## City of Salisbury Ethics Commission

**Opinion Request Number: 2023-01**

**Date of Opinion: May 1, 2023**

**Issue & Answer:**

1. May a City employee (either part- or full-time) be appointed to a City Board, Committee, or Commission? **No.**
2. May a former City employee be appointed to a City Board, Committee, or Commission? **Yes, provided there is no improper influence or the appearance of improper influence.**

**Facts:** Requestor seeks guidance on whether current or former City employees can be appointed to sit on City Boards, Committees, or Commissions.

**Analysis:** The City Code provides “City regulations and policies shall apply to all persons whose appointments are made under the authority of the [M]ayor and city [C]ouncil, unless otherwise provided for in the charter of the City.” (2.24.050). Many of the City Board, Committee, and Commission appointments are made under the authority of the Mayor and City Council, and the appointees are to comply with regulations and policies of the City.

The City Charter establishes the City’s Ethics Commission (“Commission”) shall be organized as provided in Chapter 2.04 of the City Code. (SC § 20-2). Under Chapter 2.04 of the City Code, referred to as the City’s “Ethics Code,” the Commission “may adopt other policies and procedures to assist in the implementation of the commission programs established in this chapter. (2.04.030(f)). All City elected officials, officials appointed to City Boards, Committees, and Commissions subject to the Ethics Code, and employees are subject to the conflict-of-interest provisions established by the City. (2.04.040).

The City Code does not offer direct guidance on the issue at hand, unless the City Board, Committee, or Commission is a “quasi-judicial board.”<sup>1</sup> The Ethics Code specifies that, “[e]xcept in a judicial or quasi-judicial proceeding, an official or employee may not assist or represent a party for contingent compensation in any matter before or involving the city.” (2.04.050(d)). This statement is not determinative of if an employee can serve on a City Board, Committee, or Commission (whether or not it is considered “quasi-judicial”), but it does seem to acknowledge there is a possibility for an employee to receive contingent compensation for assisting or representing a party in a matter before the City.

The City currently has many Boards, Committees, and Commissions that can be categorized as “quasi-judicial boards,” and many that likely do not qualify as such and shall be

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<sup>1</sup> The City Code defines “quasi-judicial boards” as any board or commission that conducts proceedings or who can adjudicate the rights of persons through adjudication or rulemaking. City Code 2.02.030(t). all persons sitting on a quasi-judicial board of the City are required to file financial disclosures. (2.04.070(b)).

considered to be “advisory committees.” If a City Board, Committee or Commission is not a “quasi-judicial board, it is considered to be a committee, which does not possess the same power to decide the rights of persons through adjudication or rulemaking. Advisory committees are generally small groups comprised of individual citizens to share their opinion and perspectives, study particular issues, and develop recommendations to the City officials and employees.

A potential situation when a conflict of interest may arise from an employee serving on a City Board, Committee, or Commission relates to the use of “prestige of office.” Section 2.04.040(g) 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.

(2.04.040(g)).

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 recommends that no employee (whether part- or full-time) be appointed to sit on any City Board, Committee, or Commission. Because the concern for a potential conflict of interest is not as great with respect to former City employees, there shall be no blanket prohibition that a former employee of the City cannot sit on a City Board, Committee or Commission. Rather, the appointee shall determine whether his/her appointment is subject to improper influence or the appearance of improper influence.

**Application:** The City Ethics Committee cautions that this Opinion is applicable only prospectively and only to the request of the Requestor described herein. Consequently, any current employee sitting on a City Board, Committee, or Commission may finish his/her term on that City Board, Committee, or Commission, unless a conflict becomes apparent. 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 Committee.