

## City of Salisbury Ethics Commission

**Opinion Request Number: 2023-02**

**Date of Opinion: June \_\_, 2023**

### **Issue & Answer:**

1. May the City enter into a contract for professional services with a provider who utilizes an independent contractor to provide some of the services required by the contract when that independent contractor is the spouse of a City employee? **No.**

**Facts:** The City’s Police Department (“SPD”) seeks to provide its officers with a Wellness Network consisting of allied mental health professionals well trained in how to support the unique needs of first responders. For a number of years, SPD has contracted with a non-profit organization to provide certain peer support services to its officers. That organization has proposed to expand the services provided to SPD and has partnered with a licensed psychologist to offer and provide supervision of clinical services. That licensed psychologist is the spouse of the City Administrator.

**Analysis:** Chapter 2.04.050 of the City’s Ethics Code describes prohibited conduct and interests. Pursuant to Chapter 2.04.050(a)(1), “[e]xcept as permitted by Commission regulation or opinion, an official or employee may not participate in: (i) [a]ny matter in which, to the knowledge of the official or employee, the official or employee or a qualified relative of the official or employee has an interest, unless it involves the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter” and (ii) “[a]ny matter in which any of the following is a party, unless it involves the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect the matter: . . . (B) a business entity for which the official, employee or qualified relative of the official or employee is an officer, director, trustee, partner, or employee” . . . (D) “[i]f the contract reasonably could be expected to result in a conflict between the private interests of the official or employee and the official duties of the official or employee, a business entity that is a party to an existing contract with the official or employee, or which, to the knowledge of the official or employee, is a party to a contract with a qualified relative.” A “qualified relative” means a spouse. (Chapter 2.04.030(r)).

Although there is no section of the City’s Ethics Code that would specifically or explicitly prohibit the matter *sub judice*, pursuant to Chapter 2.04.050(a)(1), the City Administrator would be precluded from participating in a “disposition or decision” that is not administrative or ministerial in nature or in a “disposition or decision” if the contract could be expected to result in a conflict between the private interests of the official or employee and the official duties of the official or employee.

Because the Chief of Police reports to the City Administrator, it could be expected that the City Administrator could participate in a “disposition or decision” regarding the supervision of SPD or any actions involving officers who were examined or treated by the licensed psychologist. There is also a concern that officers may not be forthcoming in seeking mental health services from a licensed psychologist who is the spouse of the City Administrator.

Moreover, although this contract for professional services is exempt from the competitive process, Chapter 2.32.050 of the City Code authorizes the Director of Procurement to engage in competitive negotiations with the non-profit organization. In effect, the Director of Procurement and the Chief of Police, both of whom report to the City Administrator, would have to evaluate qualifications and pricing for the necessary services to be provided, in part, by the City Administrator's spouse. This dynamic could put both department heads at a disadvantage when negotiating for the City.

In short, although there is no direct legal prohibition to the matter *sub judice*, there is no practical way to avoid a conflict of interest, or, at a minimum, the appearance of a conflict of interest, given the dual role between a "qualified relative," on the one hand, and a partner or independent contractor of the non-profit organization, on the other hand. Accordingly, for the City to enter into the contract for professional services with the non-profit organization, the non-profit organization must partner or contract with another licensed psychologist to provide supervision of clinical services as required by the contract.

**Application:** The City Ethics Committee cautions that this Opinion is applicable only to the request of the Requestor 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 Committee.