



City of Atlanta Board of Ethics Formal Advisory Opinion 2019-1

Spouses and Domestic Partners of City Officials and Employees Doing Business with the City

Opinion Summary

The Ethics Code is designed to protect the integrity of city government by prohibiting city officials and employees from engaging in activities that could be construed as a conflict of interest. Specifically, the ethical standards prohibit officials and employees from participating in business activities, rendering services, or having contractual, financial, or personal interests that conflict with an individual's official duties or the city's best interest. See Atlanta, Ga. Code §§ 2-802, 2-812, 2-820. These standards also apply to situations that would create the *appearance of a conflict or impropriety* to the public and impair the individual's independence or objectivity in the performance of his or her official duties. See Atlanta, Ga. Code §§ 2-802, 2-813.

It is often difficult for an official or employee to ascertain whether there may be a conflict or appearance issue in situations involving his or her spouse or domestic partner who is engaged or seeking to do business with the City. The Ethics Board seeks to provide clear guidance to officials and employees to avoid such situations.

Question Presented

What circumstances might create a potential conflict of interest or appearance of impropriety when a city official's or employee's spouse or domestic partner is doing or seeking to do business with the City?

Background

In recent years, there has been an increase in conflicts and appearance of impropriety issues surrounding city officials and employees and their spouses or domestic partners doing or seeking business with the City or working for entities engaged or seeking business with the City. Section 2-812 of the Atlanta Code prohibits employees and officials from engaging in any level of contract participation when there is a financial or personal relationship possessed by the employee or a member of their immediate family which creates a conflict of interest. While the Ethics Code does not specifically regulate "appearances of impropriety," it does set forth in Section 2-813 the procedure for city officials and employees to follow in disclosing a conflict. This process requires disclosure of any financial or personal interests of which the city official or employee knows or should reasonably know exists.

The issues surrounding spouses and domestic partners are often the most difficult to assess because of the intimate relationship between parties and possible immunities granted to the individuals resulting from the relationship. The difficulty of isolating two individuals who share a spousal or domestic partner relationship increases the potential for conflicts and appearances of impropriety. See New York State Ethics Comm. Advisory Op. No. 97-19 (1997). <https://jcope.ny.gov/system/files/documents/2018/01/advisory-opinion-97-19.pdf>

Officials or employees may not clearly understand what a conflict is when their spouse or domestic partner is involved and, as a result, may not reach out to the Ethics Board or Office for guidance. It is important to understand that a conflict may not necessarily arise from an individual's motives. Instead, it is the public's *perception* of an individual's behavior or conduct that could suggest a conflict and raise public scrutiny. See Robert F. Wechsler, "*The Responsibilities of a Local Government Official's Spouse*" (2009). <http://www.cityethics.org/node/682>

Conflicts of interest and appearance issues without appropriate resolution have the potential to erode trust in the City's ability to be objective in its decision making, can lead to increased public scrutiny, and may even place city contracts or bids at risk. It may also affect department morale and create problems when the spouse or domestic partner of a city official or employee interacts directly with the department he or she serves. See Robert F. Wechsler, *Local Government Ethics Programs: A Resource for Ethics Commission Members, Local Officials, Attorneys, Journalists, and Students, And A Manual for Ethics Reform*, 268-269 (2013); New York State Ethics Comm. Advisory Op. No. 97-19 (1997). <https://jcope.ny.gov/system/files/documents/2018/01/advisory-opinion-97-19.pdf>

A review of advisory opinions issued by other municipalities, such as New York City and the City of Chicago, demonstrate that other jurisdictions provide similar guidelines in analyzing whether the spousal or domestic partner relationship has the potential to create a conflict of interest or an appearance of impropriety.

Discussion

The City's Code of Ethics regulates potential conflicts of interest by first identifying whether there is a financial or personal interest involved. A *financial* interest includes anything that, directly or indirectly, provides a monetary or material benefit to a city official or employee, to an official's or employee's immediate family, or to a person who employs or retains the services of an official or employee or a member of their immediate family. A *personal* interest is any interest that arises from a relationship with immediate family or business associations regardless of whether any financial interest exists. The Code prohibits an official or employee from participating in any discussions or decisions related to a contract if a financial or personal interest exists. The Ethics Code regulates the procedures for disclosure of interests and specifies when recusal is required. See Atlanta, Ga. Code §§ 2-801, 2-812, 2-813; City of Atlanta Board of Ethics Formal Advisory Op. 2008-2 (2008) ("Disclosure of Conflicts of Interest").

To provide guidance to city officials and employees, the Ethics Officer presents examples that may raise a conflict or appearance issue and provides guidance on how to avoid them.

Situations that may raise a potential conflict or appearance issue

1. Domestic partner of official or employee works for contractor doing business with the City

An employee works as a Project Manager in the Office of Watershed Protection with the Department of Watershed Management. His domestic partner works for a contractor who does business with the City and routinely works with the employee's division on various projects. The employee has a personal interest because his domestic partner works for the contractor who works directly with and is regulated by his department.

The employee must disclose his partner's relationship with the contractor to his department which may require further discussion with the Ethics Office. To avoid potential conflicts and the appearance of impropriety, the employee must never be in a position to make or influence **any** decisions related to the contractor. Specifically, this means the employee cannot participate in any discussion related to the contractor, or seek to influence any decisions, which may include voting or review of the contract. If the employee, in his official capacity as Project Manager, is required to provide any oversight of the domestic partner, then a conflict may exist which could require complete recusal and disclosure pursuant to Section 2-813.

2. Spouse of official or employee has a business relationship with a company that is doing business with the official or employee's department

A deputy department head for the Atlanta airport has a spouse who is the owner and president of an airport concessions company. The spouse has a business relationship at another airport with a nationwide concessionaire who operates multiple concessions at the Atlanta airport. A few years after being hired by the City, the deputy is assigned to oversee the airport concessions division, which includes oversight over all airport concessions contracts.

The employee has a personal interest in any decision related to a contract with the nationwide concessionaire based on his spouse's business relationship with the company. Generally, the best practice is for the employee to fully disclose the conflict pursuant to Section 2-813 and recuse himself from any matters involving the nationwide concessionaire. However, in this case, recusal is not a viable option because of the spouse's ownership interests and her ongoing relationship with the nationwide concessionaire. Therefore, the employee must no longer oversee the concessions division.

3. Spouse or domestic partner of official or employee is employed by a firm that may respond to request for proposals issued by official's or employee's division

An employee leads a division in the Department of Public Works. Her position requires her to review and evaluate the technical portions of all requests for proposals for repairs on city structures. The technical portions are set forth by state law, therefore, cannot be designed to favor a potential bidder. As part of her duties, the employee routinely supervises work performed under a contract awarded pursuant to a request for proposal. The employee reports to her department head on this work, and she makes suggestions for modifications or additions to the work being performed under the contract. The employee's spouse works for a firm which has in the past responded to requests for proposals involving similar work for the division and may do so again in the future.

If the firm is selected to contract with her division, the employee may be involved in the development of the **technical** aspects of request for proposals for structural repairs. However,

to avoid any conflicts of interest or appearance issues, the employee **must** recuse herself from participation in all matters relating to the selection of a winning bid in response to a request for proposal where her spouse's firm has submitted a bid. The employee should also recuse herself from all matters relating to any aspect of contracts awarded to the firm by the department. See New York City Conflicts of Interest Board Advisory Op. No. 98-1 (1998) ("*City Position, Use of Family Relationships, Recusal*").

https://www1.nyc.gov/assets/coib/downloads/pdf5/aos/96_98/AO98_01.pdf

4. Chief Financial Officer seeks to contract with bank that is run by a spouse or domestic partner

The City hires a new Chief Financial Officer for the upcoming fiscal year. The CFO has been advised that the City needs to either cut expenses or increase revenue. She determines that the bank the City currently uses is offering an interest rate dramatically lower than the prevailing market rate and seeks a new bank. The CFO knows that the bank for which her spouse is the president can provide a better interest rate on the City's accounts that could effectively boost revenue. The bank, as with any vendor, would be required to seek business with the City "through sealed competitive bidding or requests for proposal where such bids are opened, and the awards are made at meetings open to the public." See Atlanta Ga. Code § 2-820(c).

Because the CFO's spouse is the president of the bank and it is likely that, if awarded a contract to do business with the City, she will be involved in city-related financial matters handled by the bank, the CFO has a personal and financial interest in the matter. Therefore, the CFO would be subject to Section 2-812 and Section 2-813 requiring disclosure of any interests and complete recusal from the process. In this case, the Deputy CFO should handle all matters related to the bid process and securing of the contract. The CFO should exercise caution in all contacts with city personnel involved in the process including emails, phone calls and text messages, to avoid any appearance of impropriety.

5. Judge has no ownership interest in spouse's or domestic partner's law firm

A judge is elected to the Municipal Court. The judge's spouse owns a law firm seeking to be retained as outside counsel for the City on a real estate matter. The judge does not have an ownership interest in the firm, however, she asks for a review from the Ethics Office to determine whether her relationship might create any conflicts or raise an appearance of impropriety.

While the judge has a financial and personal interest due to the spousal relationship, no conflict exists because the real estate matter would not be handled in her court. Further, the judge would not be able to take any measures that would affect the relationship of her spouse's firm with the City because the decision to hire outside counsel is made by the Department of Law. For these reasons, there is likely no conflict, or even an appearance of impropriety. Nonetheless, a conflict would arise if the spouse's firm had any matters before the judge in municipal court that would require the judge to disclose and recuse herself. If the spouse had any matters before other judges, the judge would only need to disclose the potential conflict and not engage in any communications that would raise an appearance of impropriety.

6. Official's or employee's spouse or domestic partner offered employment by city contractor

A high-ranking employee's spouse is offered employment by a city contractor soon after it has contracted to do business with the city. The employee has contract management authority over multiple city contracts. The employee's deputy, who works under his direct supervision,

represents the department during contract negotiations with the contractor. The deputy reports to the employee on the general development of the negotiations, yet no specific details are discussed. The employee has no direct involvement with the contract negotiations nor is his spouse mentioned during the discussions. While the employee has no role in supervising or implementing the project, his position requires him to review and either sign or reject these types of contracts. Additionally, his authority would extend to any modifications to an existing contract or any new contracts involving this contractor.

The employee's spouse met a representative of the contractor two months earlier at a social event where they discussed her editorial background and she provided her resume to the representative for the possibility of future employment. The representative did not discuss the project or the details of a potential job, however, the spouse was aware that the contractor had many contracts with the City.

The employee in this matter would have a financial and personal interest in any matter involving the contractor if the contractor decided to employ his spouse. In addition, the employee is not allowed to exercise management authority over a contract with any person who employs a relative of the employee. If the contractor were to employ the spouse, the employee would be in a position of violating the Code of Ethics or of not being able to fulfill his official duties. Therefore, the employee's spouse should decline any offer of employment presented to her by the contractor given her spouse's position with the City. See City of Chicago Board of Ethics Advisory Op. Case No. 93032.A (1993) ("Employment of Relatives") https://www.cityofchicago.org/dam/city/depts/ethics/general/AO_EmployRelatives/93032.A.pdf; City of Chicago Governmental Ethics Ordinance Ch. 2-156, §§ 2-156-130(b), 2-156-130(c).

Questions to raise when reviewing potential conflict or appearance issues

- Will a city official's or employee's office be working directly with a firm/contractor that employs the official's or employee's spouse or domestic partner?
- Will a city official or employee be a party to, or otherwise involved in, city-related matters handled by a firm/contractor that employs his or her spouse or domestic partner?
- Will a city official or employee make decisions for, or influence the outcome of, any matter involving the official's or employee's spouse or spousal contractor?

If the answer to **any** of the above questions is yes, then there may be a potential conflict of interest or appearance of impropriety that requires disclosure and possible recusal.

Addressing potential conflicts or appearance issues and procedures for disclosure

How to Address Conflicts

- Pending legislation
 - City council members who have a financial or personal interest in pending legislation should **decline to participate** in any discussion or vote on the matter and should file a conflict of interest disclosure form.
- Pending matter
 - Employees or board members who have a financial or personal interest in a matter pending before them or their agency should **immediately remove**

themselves from the decision-making process, and, when required, file a conflict of interest disclosure form.

Procedure for Disclosure

- Prior to any decision, a party should verbally disclose a potential conflict of interest at any meeting at which a decision will be made.
- The disclosure should appear in the minutes of the meeting or in the agency's official records.
- An online **Conflict of Interest Disclosure** form should be completed at the Electronic Filing System at <https://atlantaefile.org>.

No Blanket Disclosure

- An official or employee must file a disclosure form **every time** there is a separate piece of legislation or decision which presents a conflict of interest pending before the individual or his or her agency.

See City of Atlanta Board of Ethics Formal Advisory Op. 2008-2, (2008) (“*Disclosure of Conflicts of Interest*”).

Conclusion

Avoiding conflicts of interest and the appearance of impropriety becomes difficult at times because an official or employee may not always recognize that an actual conflict exists or that the situation or conduct may create the appearance of a conflict. Conflicts and appearance issues place burdens on an official's or employee's objectivity in carrying out his or her responsibilities to the City. It is important for city officials and employees to carefully evaluate whether their roles or any actions concerning their spouses or domestic partners engaged in or seeking business with the City create a potential conflict which may raise public scrutiny.

Persons with questions not covered under these guidelines are encouraged to seek advice with the Ethics Office about their specific situation.

Adopted January 17, 2019

City of Atlanta Board of Ethics

Kate Wasch, Chair

Jessica Stern, Vice-Chair

Todd A. Gray

Nichola R. Hines

Gerry Neumark

Wesley Tharpe