

CITY OF COLLEGE PARK ETHICS COMMISSION

ADVISORY OPINION 2016-02

October 12, 2016

Councilmember Fazlul Kabir has asked the Ethics Commission for an advisory opinion regarding whether his part-time employment with the University of Maryland requires him to recuse himself from voting on matters relating to a proposed project involving a partnership between the City of College Park and the University of Maryland to establish a child care facility on a City-owned property providing child care services to City residents and University employees.

I. Facts

Councilmember Kabir is a full-time employee of the U.S. Securities and Exchange Commission, but is employed as an Adjunct Professor by the University of Maryland to teach a class in cybersecurity. He teaches his course only during the fall semester and works three to four hours per week when his class is in session.

II. Applicable Law

Chapter 38 of the College Park Code establishes ethical standards for City officials. The goal of the Ethics Chapter is to ensure that City officials perform their duties with only the best interests of the City in mind. Section 38-11 prohibits City officials from participating in certain matters and holding certain employment relationships that may create conflicts between their private interests and the interests of the City.

Section 38-11(C), which prohibits City officials from participating in matters in which they have a conflict of interest, provides, in pertinent part, as follows:

- C. Participation prohibitions. Except as permitted by commission regulation or opinion, an official or employee may not participate in:

* * *

- (2) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:

* * *

- (b) A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner, or employee;

Section 38-4 defines “business entity” as “[a]ny corporation, limited liability company, general or limited partnership, sole proprietorship (including a private consulting operation), joint venture, unincorporated association or firm, institution, trust, foundation or other organization, whether organized for profit or not. Business entity does not include a governmental entity.

III. Discussion and Conclusion

The University of Maryland is a public university established under Division III, Higher Education, of the Education Article of the *Maryland Code*. Accordingly, it is a governmental entity and does not constitute a “business entity” for purposes of the Ethics Chapter. Therefore, Councilmember Kabir’s employment with the University of Maryland does not require that he recuse himself from participating in the City Council’s consideration of a possible partnership between the City and the University to develop a child care facility or other matters before the Council relating to the University of Maryland.¹

¹ The Commission notes that, if the City enters into a partnership with the University to establish a daycare center, the project is likely to require a contract between the City and University. The negotiation or existence of a contract between a City Official’s employer and the City implicates section 38-11(D), which governs outside employment by City officials. Unlike section 38-11(C), that section applies to employment with any type of entity, including governmental entities. It prohibits City Officials from maintaining employment with an entity that “is negotiating or has entered into a contract” with the City. However, the Commission has promulgated Ethics Regulation 2012-01, which establishes substantive procedural requirements for the issuance of a waiver of the employment restrictions section 38-11(D). The Regulation provides as follows:

Outside Ministerial Public Employment Permitted

1. This regulation is issued pursuant to section 39-11(D) of the College Park City Code.
2. The Ethics Commission, by Advisory Opinion, may permit a City official or employee to maintain specific outside employment with a state, federal, or local government entity that is negotiating or has entered a contract with the City agency, board, or commission with which the City official or employee is affiliated if:
 - a. The City official’s or employee’s state, federal, or local government position is purely administrative or ministerial;

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b. The City official or employee notifies, in writing; the head of his or her City agency, board, or commission (which, for City Councilmembers and the City Manager, shall be the City Council) of the potential employment, including the employer, position title, and position duties, and submits a copy of the written notice to the Ethics Commission; and

c. The Ethics Commission thereafter determines that the City official's or employee's specific circumstances do not otherwise create a conflict of interest or appearance of conflict.

The Commission encourages Councilmember Kabir to submit written notification of his employment and the potential contract with the University to the City Council and the Ethics Commission and request a waiver of section 38-11(D). (Although a teaching position is not one traditionally considered "ministerial," for purposes of the Ethics Chapter, the Commission believes that teaching positions are ministerial because they do not involve decision making authority on behalf of the employer that could affect the interests of the City.