

CITY OF COLLEGE PARK ETHICS COMMISSION

ADVISORY OPINION 2016-03

November 17, 2016

Councilmember Fazlul Kabir has requested a waiver of section 38-11(D) of the Ethics Chapter of the College Park Code regarding his employment as an Adjunct Professor with the University of Maryland

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. His sole duty as an Adjunct Professor is to teach a class in cybersecurity. He does not have the authority to make policy decisions on behalf of the University. He teaches his course only during the fall semester and works three to four hours per week when his class is in session.

Recently, the City of College Park and the University of Maryland discussed entering into a partnership to establish a child care facility on a City-owned property providing child care services to City residents and University employees. As a result, Councilmember Kabir requested an advisory opinion from the Ethics Commission to determine whether his employment with the University created a conflict of interest that prohibits him from participating in the City Council's consideration of the child care facility project under section 38-11(C) of the Ethics Chapter, which governs conflicts of interest relating to specific matters of City business.

The Commission, in Advisory Opinion 2016-02, opined that Councilmember Kabir did not have a conflict of interest prohibiting him from participating in the Council's consideration of the child care facility project because section 38-11(C) does not regulate employment with government entities (such as the University of Maryland). However, the Commission advised Councilmember Kabir that, if the City and the University were to begin negotiating or enter into a contract regarding the child care facility, then he would need a waiver of section 38-11(D) to maintain his employment with the University while he is a Councilmember.

II. Applicable Law

Section 38-11 of the Ethics Chapter 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. Subsection (D) of that section prohibits City officials from holding certain employment relationships that may create conflicts between their personal interests and the interests of the City. It provides as follows:

D. Employment and financial interest restrictions.

(1) Except as permitted by regulation of the Commission when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:

(a) Be employed by or have a financial interest in any entity:

* * *

(2) That is negotiating or has entered a contract with the agency, board, or commission with which the official or employee is affiliated; or

(b) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee.

Ethics Commission Regulation 2012-01, which the Commission promulgated pursuant to its authority under section 38-11(D)(1), governs outside public employment by City officials. That section 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;
 - 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.

III. Discussion

The University of Maryland is a public university established under Division III, Higher Education, of the Education Article of the *Maryland Code*. In a memorandum dated October 20, 2016, Councilmember Kabir formally advised the City Council and the Ethics Commission of his employment with the University of Maryland and requested that the Commission grant him a waiver of section 38-11(D). Accordingly, the Commission shall consider whether Councilmember Kabir's employment as an Adjunct Professor is purely administrative or ministerial and, if so, whether the circumstances of his employment create a conflict of interest or the appearance of a conflict of interest.

Although teaching positions are not traditionally considered "ministerial," for purposes of Regulation 2012-01, the Commission believes that Councilmember Kabir's Adjunct Professor position is purely ministerial because, as an Adjunct Professor, he does not have decision making authority on behalf of the University or responsibilities to the University that could pit the interests of the University against those of the City. Rather, his sole duty is to teach a class regarding cybersecurity.

Given the relative size of the City of College Park and the University of Maryland, in terms of population/enrollment and budget, the Commission believes that the possibility that Councilmember Kabir's employment as an Adjunct Professor for the University will influence him in the performance of his duties as a City Councilmember is too remote to create even the appearance of a conflict of interest. The Commission does not believe that any vote cast, policy endorsed, or action taken by Councilmember Kabir in the performance of his official City duties will have a sufficient impact upon the University or his position as an Adjunct Professor to influence his decision making as a City official. In addition, the part-time nature of his Adjunct Professor position and the narrow scope of duties, makes it unlikely that the University would expect Councilmember Kabir to make decisions as a City Councilmember based on the interests of the University or that he would feel compelled to act in the University's interest as opposed to the interests of his constituents.

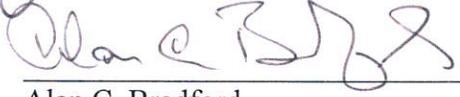
Based on the facts provided by Councilmember Kabir and the facts readily available to the Commission, we conclude that a waiver of section 38-11(D) Councilmember Kabir's employment as an Adjunct Professor at the University of Maryland pursuant to Ethics Commission Regulation 2012-01 is warranted.

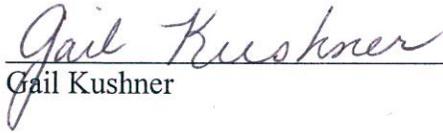
IV. Conclusion.

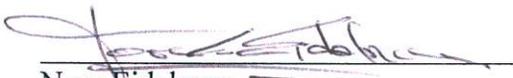
The Commission hereby grants Councilmember Kabir a waiver of section 38-11(D) under Ethics Commission Regulation 2012-01. However, in light of the potential for a variety of contractual relationships and other matters arising between the City and the University, the Commission recommends that Councilmember Kabir remain vigilant for potential conflicts of interest that may arise. He should recuse himself from City matters in which there is a conflict of interest or apparent conflict as a result of his employment with the University of Maryland and seek additional advisory opinions should matters arise between the City and the University in the

future that have a more direct bearing on his employment with the University.


Joseph Theis, Chair

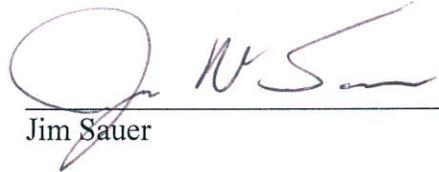

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