

BERNALILLO COUNTY CODE OF CONDUCT REVIEW BOARD

Don Bruckner, Member
Sarita Nair, Member
Edmund E. Perea, Vice-Chair



Michael Flynn, Member
Alan Packman, Chair

Advisory Opinion 2014-002

Dear Mr. McGregor:

You requested an Advisory Opinion from the Code of Conduct Review Board (“the Board”) concerning a county employee’s obligations under the Bernalillo County Code of Conduct (“the Code”) related to employment after leaving County service and the restrictions contained in Section 2-130 (n). The facts that you submitted relate to a former County employee, Chris Gonzales, who left County service on September 19, 2014 to take a position with a local wastewater contractor. The other facts that you provided are as follows:

“Mr. Gonzales’s job entails overseeing a group of inspectors, as well as performing essential duties of those inspectors on more difficult applications, regarding permitting of wastewater systems in the unincorporated portions of the County. In a typical scenario, Contractor A will be requesting an application to construct or modify an existing on-site wastewater system (septic system) as part of a private non-County contract with a private homeowner, business, or as part of a subcontract to a general contractor. This involves providing a site plan, construction plans, and payment of an application fee, and then staff review and approval of the application. Fees are typically \$100 or less per application. After receiving the application approval (from Mr. Gonzales or one of the subordinate inspectors under his direct supervision), Contractor A proceeds with construction of the system and requests a subsequent site inspection, as-built approval, and if satisfactory, a permit for operation of that system is then issued to the property owner (and not to Contractor A).

Mr. Gonzales has received and accepted an offer of employment with Contractor A. In the course of his new duties, Mr. Gonzales will likely be presenting permit applications for review, supervising the subject work as an employee of Contractor A, and scheduling/seeking inspection by the County of wastewater systems constructed by Contractor A. His employment duties do not foresee his serving as Contractor A’s representative in seeking contracts directly with the County within the next one year period.”

Specifically you asked the following questions:

- 1.) Given the subject header in the Code of Conduct specified “Contracts,” does the provision pertain strictly to Contracts (as defined in the Code), or does it apply to other

administrative process such as permit applications (“taking action”) being submitted in the normal course of business as an obligation of a third-party contract to which the County is not a party?

- 2.) Does submittal of a permit application while under employ of Contractor A, which Mr. Gonzales previously regulated and administered,” constitute “representing for pay a person before the County”?
- 3.) If it does constitute “representing” – what portions of Contractor A’s business dealing may Mr. Gonzales conduct before the County?

As discussed below, the Board having met and reviewed the facts, the relevant sections of the Code and your questions feels that the answer provided to Question 2 should provide the necessary guidance and obviates the need for addressing Questions 1 and 3. In summary, the conclusion that the Board has reached is that any professional interaction between Mr. Gonzales and the County on behalf of his new employer is prohibited for a period of one year pursuant to the restriction contained in Section 2-130 (n) (2) of the Code.

In considering your question, the Board considered all of the language contained in Section 2-130 (n). That section states the following:

- (1) The county shall not enter into a contract with, or take any action favorably affecting, any person or business that is:
 - a. Represented personally in the matter by a person who has been an elected official or employee of the county within the preceding year if the value of the contract or action is in excess of \$1,000.00 and the contract is a direct result of an official act by the elected official or employee; or
 - b. Assisted in the transaction by a former elected official or employee of the county whose official act, while in county employment, directly resulted in the county's making that contract or taking that action; or
 - c. A former public officer or employee shall not represent a person in the person's dealings with the county on a matter in which the former public officer or employee participated personally and substantially while a public officer or employee.
- (2) For a period of one year after leaving county service or employment, a former elected official or employee shall not represent for pay a person before the county.

The portion of this section relevant to this opinion is contained in subsection (2) which relates to representation before the county by a former employee. The key term in this section is the term “represent”. Black’s Law Dictionary (5th Edition) defines the term “represent” as:

“To appear in the character of; personate; to exhibit; to expose before the eyes. . . To represent a person is to stand in his place, to speak or act with authority on behalf of such person; to supply his place; to act as his substitute or agent.”

Based upon this definition, the language contained within the Code and the facts that were submitted to the Board, the Board feels that it would be a violation of the Code if Mr. Gonzales were to represent any client in front of the County on behalf of his new employer for a period of

one year. As noted above, the Board considers representation to include any sort of professional interaction with the County on behalf of the new employer. Such representation could include activities such as the preparation, review, presentation and/or submittal of any documents or reports to the County on behalf of the new employer or a client of that employer. The one year period began the day after Mr. Gonzales left his employment with the County.

While the Board appreciates your request and the intention to abide by the Code, the Board feels it important to encourage that requests for advisory opinions be made prior to taking any action that might constitute a violation of the Code. The purpose of advisory opinions is to provide guidance and interpretation for future actions and decision making. As such, while the Board welcomes your request, it also recommends that future requests from any source be provided in advance of taking any contemplated action.

Your request was for an Advisory Opinion from the Board and as such you should be reminded of the conditions contained within the Board's Rules and Regulations that attach to this opinion. Section 2 (D) of the Board's Rules and Regulations provide that you may rely on this opinion as a basis for your future actions and as a defense to any future complaint that may be filed against you only to the extent that the material facts provided were complete and accurate and that you have followed the advice contained within this request. While this Opinion may be used by either a complainant or a respondent to a Code of Conduct Complaint as precedent, it is not binding on the Board unless it was issued to and followed by the respondent to the complaint. A copy of these rules is provided along with this Opinion for your review.



Alan Packman, Chair
Bernalillo County Code of Conduct Review Board

10/2/14

Date