



# Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

Website: <http://opacnmi.com>  
1220 Route 312, Capitol Hill, Saipan, MP 96950

Mailing Address:  
P.O. Box 501399  
Saipan, MP 96950

E-mail Address:  
[mail@opacnmi.com](mailto:mail@opacnmi.com)  
Phone: (670) 322-6481

## MEMORANDUM

OPA Ethics Opinion 2024-03

Date: May 17, 2024

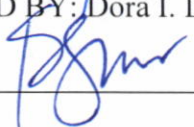
FOR PUBLIC RELEASE PURSUANT TO 1 CMC § 8561(j)

FROM: Kate B. Fuller, Legal Counsel

Signature: 

Date: 5/17/24

REVIEWED BY: Dora I. Deleon Guerrero, Temporary Public Auditor

Signature: 

Date: 5/17/2024

**Subject: Government Ethics Code Advisory Opinion**

The CNMI Office of the Public Auditor (“OPA”) received a request from a government employee for an ethics opinion about whether s/he, as a Resident Department Head, could work part-time in the private sector to off-set austerity pay cuts imposed on all government workers. The inquiry also noted significant family hardship from the pay cuts. OPA, however sympathetic to the employee’s situation, must interpret and apply the provisions of the Ethics Code Act of 1992 (“Ethics Code”) objectively and equally with respect to all, regardless of hardship.

OPA is empowered to offer advisory opinions arising under the Ethics Code under 1 CMC § 8561(j). OPA is not authorized to offer general opinions about other sections of the CNMI Code or regulations, and this opinion is limited to evaluating the facts presented under the Ethics Code. There may be other provisions of CNMI law that are implicated by the proposed part-time employment and that are beyond OPA’s jurisdiction. OPA recommends seeking a legal opinion from the Office of the Attorney General about other potential issues.

The Ethics Code prohibits the use of a government position to obtain any private benefit for public employees or their relatives. 1 CMC § 8532(a). Based on the facts provided, the Resident Department Head did not use his or her governmental position to obtain additional work.<sup>1</sup> Section 8532(a) prohibits a government employee from any decision-making or regulation of his or her private employer that results in any direct or indirect private gain.<sup>2</sup> Regulating the competitors of the private employer may also result in an indirect private gain under 1 CMC § 8532(a) and must be avoided. Under 1 CMC § 8544, the Ethics Code prohibits the Resident Department Head from taking part in *any process* that would affect the financial interests of the private employer. 1 CMC § 8544. Given the multiple provisions of the Ethics Code implicated by taking additional private

<sup>1</sup> The government employee indicated that a close relative is a corporate officer of the potential employer.

<sup>2</sup> OPA notes that this duty would have already arisen with respect to the decision-making process since the Resident Department Head’s close relative was an officer of the company at issue.

employment, the Resident Department Head must strictly avoid any decision-making about the new employer's industry.

Although the proposed part-time employment, as described, is not prohibited by the Ethics Act when undertaken with appropriate safeguards,<sup>3</sup> a strict division between the public position and private work is imperative. No public funds, time, resources, or staff can be used in connection with private work. 1 CMC §§ 8531(b) and 8534(a). To this end, no non-governmental business may be conducted during ordinary government hours, on government property, or with government supplies.

Likewise, the second job should not create any perceived conflict of interest. Even actions which do not create an actual conflict under the Ethics Code may run counter to its purpose. The public policies behind the Ethics Code include developing public confidence in persons holding public office, enhancing the dignity of public offices, and assuring the community that public officials are free from the influence of undisclosed private or business interests in their official acts. 1 CMC § 8502(a). These policies are undermined whenever the appearance of impropriety arises.

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<sup>3</sup> The Resident Department Head agreed to recusal from any decision-making that might affect the private employer or the private employer's competitors, and further implemented measures to ensure that any situation creating a potential conflict of interest would be elevated to the CNMI leadership of the agency rather than to local government employees. This course of action supplies the enhanced safeguards needed for a small island community.