



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
Phone: (670) 322-6481

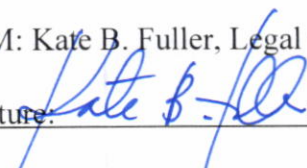
MEMORANDUM

OPA Ethics Opinion 2024-04

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 official serving on the Board of Directors (“Board”) of an agency for an ethics opinion regarding concerns about an employment application for the Executive Director position that s/he had submitted. The official had been appointed by the Governor to the Board and confirmed by the Senate. The official learned of the job vacancy announcement and applied for the position.

Under 1 CMC § 8561(j), OPA is empowered to offer advisory opinions based upon real or hypothetical scenarios with respect to the Commonwealth Government Ethics Code Act (“Ethics Code”). OPA does not offer general opinions about the legality of activities under other sections of the CNMI Code. Thus, this opinion is confined to analyzing the inquiry under the Ethics Code only.

As OPA understands it, the Executive Director for the agency serves at the pleasure of the Board. Accordingly, the public official informed the Board Chair of his/her application and the official’s recusal from participating in any Board discussions or meetings with respect to the hiring process for Executive Director. S/he also indicated that s/he would resign from the Board if hired as Executive Director.

The Ethics Code prohibits the use of a government position to obtain any private benefit under 1 CMC § 8532. Section 8532(a) states that “[a] public official . . . shall not use or attempt to use the public position to obtain private financial gain, contract, [or] employment, . . . for the public official. . . .” A Board member is clearly a public official pursuant to 1 CMC § 8503(l), and the position of Executive Director involves an employment contract for private financial gain. It would undoubtedly violate the Ethics Code to participate in Board meetings regarding the hiring

of an Executive Director after submitting the employment application or to act simultaneously as a Board member and as Executive Director. Moreover, it would violate the Ethics Code, 1 CMC § 8535(a), for the Board member to otherwise attempt to exert influence over other Board members or to gain advantage over other candidates.¹ However, recusal from participating in the decision-making process with respect to hiring an Executive Director,² avoiding any attempt to influence fellow Board members, and resignation from the board in the event of an offer of employment from the Board obviates this concern regarding a conflict of interest.

While the Ethics Code does not—when the proper measures are taken—directly prohibit a Board member from applying for employment within the agency—it is important for public officials to be cautious of a perceived conflict of interest. The public may believe that the official enjoys an advantage over other applicants. For this reason, it is particularly important that the Board member avoid any possibility of the appearance of attempting to influence other Board members with respect to the hiring decision.

The principles behind the Ethics Code include the following: developing public confidence in persons holding public office, enhancing the dignity of public offices, and assuring the community that public officials are free of the influence of undisclosed private or business interests in their official acts. 1 CMC § 8502(a). Such principles may be undermined, even in the absence of an actual conflict of interest, whenever an appearance of impropriety arises. A public official should consider this possibility and the resulting negative consequences in terms of the public's confidence in its government when assessing the propriety of pursuing employment within the government.

¹ 1 CMC § 8535(a) states that “[a] public official shall not participate in, vote on, influence, *or attempt to influence* an official decision if the public official or business with which the public official is associated has a pecuniary interest in or a potential benefit from the matter under consideration by the governmental entity of which the public official is a member.

² This is analogous to a situation in which a government official or employee may need to recuse himself from the decision-making process with respect to the procurement of items from a business in which the employee or others related to the employee has a financial interest.