

BOARD OF ETHICS  
WASHINGTON SUBURBAN SANITARY COMMISSION

**ADVISORY OPINION # A-24-02<sup>1</sup>**

**SUBJECT: CODE OF ETHICS § SECTION 1.70.180,<sup>2</sup> RESTRICTIONS ON OTHER EMPLOYMENT AND FINANCIAL INTERESTS**

By request dated March 13, 2024, a Washington Suburban Sanitary Commission (“WSSC”) employee (“Requestor”) has asked the Board of Ethics (“Board”) to issue a Waiver<sup>3</sup> of Code of Ethics § 1.70.180, to allow the employee to provide plumbing services to residential clients within the WSSC Sanitary District (“WSSD”).<sup>4</sup>

Requestor works in the Regulatory Services Division (“RSD”) within the Engineering and Construction (“E&C”) department. Currently, he is employed in the Fats, Oils, and Grease (FOG) section as a FOG Inspector. This section is responsible for inspecting commercial food service establishments (“FSE”) to ensure that discarded grease does not enter WSSC’s sewer system. Requestor’s job duties include conducting field inspections, investigations, and sampling of FSE discharges in support of the FOG Program in accordance with Federal, State, and WSSC Water requirements and regulations and the Sanitary Sewer Overflow (SSO) Consent Decree requirements. FOG investigators are not required to have a plumbing license.

In 2020 (and prior to joining WSSC), the Requestor held a master plumber/gasfitter license from WSSC.<sup>5</sup> At that time, he was listed in WSSC’s licensing database as the principal master plumber for a plumbing company that he owned. This allowed him and his company to provide plumbing services within the WSSD. Once he became employed by WSSC in 2021, RSD changed the name of the company associated with his license from his personal business to WSSC (which

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<sup>1</sup> As explained *infra*, see also Waiver Request # W-24-02.

<sup>2</sup> The Requestor references WSSC’s Outside Employment regulation found at Chapter 1.72 of the Code of Regulations. As the relevant provisions of the aforementioned regulation mirrors and refers back to Code of Ethics § 1.70.180, this opinion will refer to latter throughout to avoid duplicative references.

<sup>3</sup> Requestor initially requested that the Board grant a waiver. Since the Board is denying the request, the Board is publishing its response as an advisory opinion in accordance with Code of Ethics § 1.70.070(d).

<sup>4</sup> As defined on page 48 of the 2021 WSSC Plumbing and Fuel Gas Code, the “Sanitary District” is defined as “Generally, the entirety of Montgomery and Prince George’s counties, Maryland, excluding certain incorporated city limits and federal properties.”

<sup>5</sup> WSSC’s Regulatory Services Division is responsible for licensing and issuing permits.

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is the established practice for licensed division employees). The RSD does this in order to prevent employees from obtaining permits for plumbing work from WSSC.

Section 1.70.180(a) of the Code of Ethics (“Code”) generally restricts an employee from engaging in outside employment “if the hours of such employment conflict with the employee’s normal work shift at WSSC or *where the outside employment is of such a nature which does or may create a conflict of interest or appearance of a conflict of interest.*” (Emphasis added). Additionally, Code § 1.70.180(b)(1)(i) specifically prohibits employees from having a financial interest in a business that is regulated by WSSC, unless the Board has granted a waiver.

The job description for a FOG inspector does not require the employee to have a plumbing license or to conduct plumbing inspections. The Requestor has indicated that the RSD may decide to remove WSSC as the company name associated with licensed plumber/gasfitter employees who do not perform plumbing inspections, including his license. He states that if this occurs, he would like to reinstate his previous LLC in the company name section of RSD’s records. He also would like to be able to offer his plumbing services within the WSSD. This would mean that he has an outside interest and employment in an entity that does business with WSSC. Assuming that any plumbing work would be performed outside of the employee’s work hours at WSSC, the issue to be determined is whether Requestor satisfies the conditions for receiving a waiver to: 1) have an interest in a regulated entity, and 2) provide plumbing services within the WSSD.

To grant a waiver request, the Board must find that all three sub-provisions of Code § 1.70.070(a) have been met. Generally, this section imposes the requirement that the best interests of WSSC or the public must outweigh any potential conflict of interest. Additionally, for waiver requests related to secondary employment, the Board must find that at least one of the three sub-provisions delineated in Code § 1.70.070(b) applies. This Code section requires consideration of the availability of competent services to WSSC or the public, impact on WSSC’s ability to hire or retain highly-qualified employees, and whether the outside employment is likely to create an actual conflict of interest.

The Requestor has not demonstrated how granting a waiver would be in the best interests of WSSC or the public as required in Code § 1.70.070(a)(1). The Requestor has represented that

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the only way for him to retain his master license is through a company. According to the WSSC Plumbing and Fuel Gas Code, a plumbing company must, among other requirements, designate a principal master plumber and have commercial insurance of at least \$1,000,000<sup>6</sup> in order to operate within the WSSD. While the Requestor is correct that a plumbing company needs the aforementioned items to provide services within the WSSD, the master license itself is personal to him. If he is not allowed to perform work within the WSSD, there is no need for him to be designated as a principal master plumber for a private company under the WSSC Plumbing Code. Since there is no need for the Requestor to have a company, WSSC's public interests in plumbing companies having sufficient insurance to cover any claims is not applicable.

Additionally, allowing the Requestor to own a plumbing company regulated by WSSC and provide services within the WSSD would give him an impermissible unfair economic advantage over other RSD employees. (See Code § 1.70.070(a)(3)). In the instant matter, the Requestor works in the WSSC division responsible for licensing plumbers/gasfitters and issuing work permits within the WSSD. The Board has previously opined that plumbing inspectors, who are also licensed plumbers employed in the same division as the Requestor, could only provide plumbing services to customers outside the WSSD. (See Advisory Opinion A-08-08). Additionally, the Board has placed restrictions on outside employment by employees with other licenses when it would result in an appearance of a conflict of interest. (See Advisory Opinion A-12-01). Accordingly, the Board believes that this would create an economic advantage over plumbing inspectors if he, as a licensed plumber, was able to be paid by WSSC while also using offering his services within the WSSD simply because he has a different job title.

In conclusion, the Board denies the request for a waiver due to finding that the criteria outlined in Code §§ 1.70.070(a) and (b) have not been met for either having an interest in a regulated entity or for performing plumbing work within the WSSD. However, the Board advises that Requestor is not prohibited from performing part-time plumbing and/or gasfitting work outside of the WSSD. To avoid any confusion, the Requestor is cautioned not to wear any clothing

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<sup>6</sup> WSSC Plumbing and Fuel Code § 118.8.1.3: "Minimum insurance coverage. The minimum insurance requirement shall be a commercial general liability policy with a combined aggregate limit for bodily injury and property damage of \$1,000,000."

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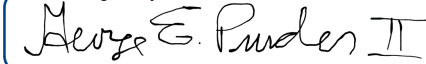
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bearing the WSSC name or logo while performing part-time plumbing and/or gasfitting work outside of the WSSD. Also, Requestor should keep management informed regarding the company for which Requester works. The Board advises that it is a conflict of interest for Requestor, in his duties as a WSSC FOG Inspector to inspect and/or approve work done by any part-time employer, or if his own business, to inspect a company that uses his services in another jurisdiction. (See Code of Ethics § 1.70.180(b)(2)).

The Board directs Requestor to seek additional guidance from the Ethics Office about any outside employment involving his WSSC license or any outside business interest that is regulated by WSSC Water.

On motion by Member Hysen, seconded by Member Hausman, the Board agreed at its meeting held on June 12, 2024, to deny the request for a waiver by a vote of 3-0.

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George E. Pruden, II  
Chair