



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 2024-01


Date: March 18, 2024

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

FROM: Joseph Przyuski, Legal Counsel
CNMI Office of the Public Auditor

Signature:  Date: 3/18/2024

REVIEWED BY: Dora I. Deleon Guerrero, Temporary Public Auditor
CNMI Office of the Public Auditor

Signature:  Date: 3/18/2024

Subject: Government Ethics Code Advisory Opinion

In January of 2024, the CNMI Office of the Public Auditor (“OPA”) received an inquiry from a non-government employee associated with a not-for-profit organization. The letter requested an ethics opinion on whether an immediate relative of a public official would be permitted to receive a permit, license, or grant under a program managed by the public official. The non-profit organization consisted of individuals who had permits or licenses under the government program administered by the public official.

OPA offered an advisory Ethics Opinion to the individual under 1 CMC § 8561 (j) of the Commonwealth Government Ethics Code Act (“Ethics Code”). Under that authority, OPA may offer advisory opinions based upon real or hypothetical scenarios with respect to the Ethics Code and may offer such opinions based on requests “by a public official or public employee, or by a person who is personally and directly involved.” OPA construed the request as one from a member of the general public who was “personally and directly involved.”

OPA is required to make such opinions available to the public, while redacting the identity of the requesting party and that of others involved under Section 8561 (j) of the Ethics Code. OPA offers the following published opinion based on that mandate. The opinion is based on the following provided or assumed general facts: 1) The public official’s authority included oversight of the permit or license program. 2) There were no facts provided to indicate whether the public official participated in the decision-making process for the permit or license.

The opinion, and this summary version of the same, are confined to analyzing the inquiry under the Ethics Code only. OPA is not authorized to offer general opinions regarding the legality of activities under other sections of the CNMI Code.

Section 8532(a) of the Ethics Code prohibits public officials from using their public position to obtain a private financial gain, contract, employment, license, or other personal or private advantage for any relative. The definition of relative includes: “a person who is related to an official or employee as spouse or as any of the following, whether by blood or by adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister, half-brother or half-sister.” Thus, a public official cannot participate in the decision to grant a contract, employment, financial gain, or other private advantage, to any relative.

While participation in a decision that presents a direct conflict of interest would be prohibited by the Ethics Code, family members of public officials remain eligible to receive benefits otherwise available to the public, provided the public official recuses themselves from the decision-making process and the recusal is effective to remove the appearance of impropriety.

A distinction must be drawn also between a ministerial act and a discretionary act, the former being one in which no decision making is involved, and the act is generally available to all who apply. An example of a ministerial act would be the grant of a zoning permit for a use allowed by right, with the application and issuance of the permit only being a required formality. An example of a discretionary act would be the grant of a zoning permit for a conditional use, where the use is not permitted by right and certain criteria must be satisfied. The Ethics Code would not require a public official to recuse themselves from a ministerial action involving a relative because such act does not involve the “use” of the public position to their advantage. By contrast, recusal would be necessary in a situation involving a discretionary act.

It is important to note that public policies underlying 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 of the influence of undisclosed private or business interests in their official acts. *See* 1 CMC § 8052(a). These policies may be undermined, even in the absence of an actual conflict of interest, whenever there is an appearance of impropriety.

It is also necessary to consider whether the role of a public official is such that an actual conflict may arise by default even when recused from a discretionary decision. Depending on the office held by a public official, an actual conflict may arise simply by the inherent pressure the delegated individuals administering the program might be under when deciding an application made by the relative of their direct supervisor. In such a scenario, it is important for the decision-making authorities to determine whether they can objectively decide such an application.

It is advisable for public officials, public employees, and their family members to be aware of the conflict of interest prohibitions and to take active measures to avoid actual or perceived conflicts of interest. OPA recommends seeking legal advice from government or private counsel whenever concerns or questions arise.