



ETHICS COMMISSION
LOUISVILLE, KENTUCKY

GREG FISCHER
MAYOR

March 5, 2020

[REDACTED]
Louisville Metro Air Pollution Control District
The Edison Center

701 West Ormsby Avenue, Suite 303

Louisville, Kentucky 40203 *** by e-mail to [REDACTED] and by regular mail

Re: Request for Advisory Opinion regarding board recusal from the Air
Pollution Control District Board

Dear [REDACTED]

Your Request for Advisory Opinion dated December 11, 2019, was reviewed by the Louisville Metro Ethics Commission at its meeting on February 20, 2020, for a response. You stated in part:

My spouse [REDACTED] is Executive Director of TreesLouisville, a non-profit entity whose mission is the enhancement of Louisville's tree canopy. TreesLouisville is active throughout Louisville Metro and receives financial support from a number of organizations that are regulated by or interact with the Air Pollution Control District. These organizations include, but are not limited to, Louisville Metro Government, LG & E, the Metropolitan Sewer District, American Synthetic Rubber, Hexion, and Lubrizol.

I am requesting an opinion from the Ethics Commission on my ability to vote on matters related to entities providing support to TreesLouisville if they come before the Air Pollution Control District Board.

In addition to and subsequent to your request, you informed the Commission that your spouse's position is not voluntary in that she is a salaried employee of TreesLouisville.

[REDACTED]
Louisville Metro Air Pollution Control District
March 5, 2020
Page 2

You are a "Metro Officer" as defined by the Louisville-Jefferson County Metro Government Ethics Code, Chapter 21, § 21.01, and covered by the Ethics Code. Other relevant definitions are "conflict of interest," "family member," "Financial Gain," "Financial Interest," and "Immediate Relative." See Ethics Code, Chapter 21, § 21.01 *et. seq.*

Under the Ethics Code's Standards of Conduct, § 21.02(A)-(K), Metro Officers such as yourself are prohibited from engaging in conduct in their official business of Louisville Metro for their personal benefit, or the personal benefit of an immediate family member or a family member. Relevant portions of the Standards of Conduct include these prohibitions:

(A) No Metro Officer shall use or attempt to use his or her official position to secure unwarranted privileges or advantages, for himself or herself, members of his or her family or other persons.

(B) No Metro Officer shall act in his or her official capacity in any matter where such officer, a member of his or her family, or a business organization in which such officer has a financial interest or private interest that might reasonably be expected to impair his or her objectivity or independence of judgement. Standards of Conduct, § 21.02(A) and (B).

As a Metro Officer where your spouse is the Executive Director of a non-profit entity whose entity may have business before the Air Pollution Control District Board, you are prohibited from using or attempting to use your position as a voting Board member to secure unwarranted privileges or advantages for members of your family.

Furthermore, as a Metro Officer, your spouse has a financial interest in TreesLouisville such that, as a member of that spouse's immediate family, your actions as an Air Pollution Control District Board member "might reasonably be expected to impair [your] objectivity or independence of judgement."

Accordingly, when official business involving TreesLouisville comes before the Air Pollution Control District Board, you should not participate in and should recuse from the board discussion, decision-making, or voting on any such official business.

By recusing yourself, you should leave the meeting room where and when such official business is discussed, shall not vote on the official business at hand, remain outside the meeting room where and when the vote is being taken, and shall have these specific steps recorded in the

[REDACTED]
Louisville Metro Air Pollution Control District

March 5, 2020

Page 3

minutes of the meeting. This effectuates a true recusal where not only did you not vote, but that you took all proactive steps to remove yourself from that official business.

The Ethics Commission also understands there may be an issue with the Air Pollution Control District Board maintaining a quorum to conduct business because of your recusal. Unless there is a Louisville Metro ordinance to the contrary that sets minimum required numbers of Board members not only for a quorum to be present, but for a vote to be taken, your affirmative presence at such a Board meeting counts for a quorum being present. Even though you may recuse for good cause and leave the room during a specific part of the meeting, that does not break the quorum necessary to vote for any remaining members, no matter how small a number are left to vote.

The Ethics Commission also recognizes at Standards of Conduct, § 21.02(I) that applies to a “non-profit or charitable organization with which the Metro Officer or a member of his or her family has a financial interest or private interest” when the Metro Officer “disclosed said association to the Ethics Commission through his or her annual report . . . or if the Metro Officer discloses said association with the clerk or secretary of the voting body prior to casting such vote.” This allows a Metro Officer to act only as a result “by reason of such officer’s participation in the enactment of any ordinance, resolution, or other matter required to be voted on.”

The Ethics Commission interprets this to mean such actions as ordinances, resolutions, or other matters of *general applicability* to those affected in Louisville Metro. That is, if an ordinance, resolution, or other matter of general applicability impacts TreesLouisville and all other similarly situated non-profit entities or charitable organizations, this is not a conflict of interest subject to these mandatory disclosures. This would not include, for example, specific actions and votes on granting or withholding a Louisville Metro contract to TreesLouisville directly. That would fall under the prohibitions in Standards of Conduct, § 21.02(A) and (B) and not the exceptions in § 21.02(I).

[REDACTED]
Louisville Metro Air Pollution Control District

March 5, 2020

Page 4

If you have any further questions or concerns, please contact the Ethics Commission.

Sincerely yours,

*David S. Waskey
by raw*

David S. Waskey, Chair
Louisville Metro Ethics Commission

c: Stacy Fritze Dott, Assistant Jefferson County Attorney
(by e-mail to Stacy.Dott@LouisvilleKy.gov)
Mark R. Brengleman, Legal Counsel for the Metro Ethics Commission