



BALTIMORE CITY BOARD OF ETHICS
Ethics Opinion 13-001
(August 13, 2013)

In the course of resolving both a recent informal advice request and an unrelated complaint, the Ethics Board has been confronted with issues arising out of City employees' relationships with their unmarried, cohabitating partners. Specifically, the Board has been called upon to determine how to treat these partners under §§ 6-9 {Prohibited participation} and 6-27 {Acceptance prohibited} of the Ethics Code. As these are issues that are likely to reoccur, a public discussion of the Board's reasoning is in order.

§ 6-6 of the Ethics Code prohibits a public servant from participating in a matter under certain circumstances. § 6-6(1) prohibits participation if "the public servant has an interest in the matter of which the public servant might reasonably be expected to know"; while §6-6(2) similarly prohibits participation if "to the public servant's knowledge, a disqualifying relative has an interest in the matter". § 6-1(b) defines "disqualifying relative" to include a spouse. However, there is no specific discussion of cohabitating partners in § 6-6, or anywhere else in the Ethics Code.

The intent of § 6-6 is clearly to prohibit public servants from involvement in decisions that could directly or indirectly impact themselves or their family members in ways distinct from the general public. This understanding of the section is bolstered by the broad definition assigned to the term "interest" in the Ethics Code where § 2-19 defines "interest" as, with certain exceptions not relevant to this discussion, "any legal or equitable economic interest, whether or not subject to an encumbrance or a condition, that is owned or held wholly or partly, jointly or severally, or directly or indirectly".

In considering a complaint that was ultimately resolved by settlement early last year, the Board was called upon to apply these sections of the Ethics Code to a situation where a public servant was involved in determining the pay rate and hours worked for her live-in fiancé. Before resolving the case, the Board found that "this relationship progressed to the point whereby she developed an "interest" in his financial success sufficient to trigger the recusal requirement of § 6-6(1)".

The Board reached this conclusion by examining the couple's shared finances, living expenses, and expectations of continued economic interdependence, and determining that, given these factors, any economic benefit provided to one partner would necessarily accrue to the

benefit of the other as well. Essentially, the economic interests of each partner could be ascribed to the other because they were operating as a single economic unit.

Therefore, the economic benefit provided to her fiancé by the employee's actions constituted an "interest in the matter" *attributable to her* that should have barred her participation under § 6-6(1) regardless of the fact that her fiancé was not a disqualifying relative that would have triggered the prohibition under § 6-6(2).

More recently, the Board relied on this reasoning in responding to an official's request for clarification about what concerns could arise under the Ethics Code from the employment of his cohabitating partner, who is also co-owner of their shared home, at an entity doing business with his agency.

The employee in this instance volunteered to recuse himself from any matter involving his partner's employer. Through its staff, the Board, relying on the position it had taken in the earlier complaint, counseled that the volunteered recusal would resolve any conflict under § 6-6, and that her interests could be attributable to him because of their economic interdependence. The prohibition on the employee's participation in matters involving his partner's employer should therefore be considered mandatory rather than optional.

While this advice is consistent and correct as far as it goes, it leaves unanswered the question of how to treat gifts between this type of partner under § 6-27. Ordinarily, § 6-27 bars a public servant from accepting a gift from an employee of an entity doing business with the public servant's agency. Recognizing the inappropriateness of applying this prohibition between close relatives, the Code, in § 6-28(6), provides an exemption from this prohibition for "gifts from a spouse, parent, child, or sibling". However, this exemption clearly would not apply to unmarried cohabitating partners.

Applying the "single economic unit" analysis used by the Board in addressing the participation question to the gift question is helpful in resolving the resulting paradox that would seem to require treating cohabitating partners essentially as spouses for purposes of prohibitions, without granting the same partners the protections enjoyed by spouses in other parts of the Ethics Code. As discussed, a partner's economic interests are only ascribable to the other partner when their living arrangements make them a single economic unit for all practical purposes. For instance, if both are depositing their paychecks into one joint checking account, or both paying a mortgage account jointly, it makes little sense to say that a payment into the same account from one partner should be treated differently than from the other. They both receive the same benefit from a deposit, and the same loss from a withdrawal, regardless of which partner initiates the action.

Importantly, the Ethics Code defines a "gift" in § 2-17 as, with the exception of political contributions, "the transfer of any thing or any service of economic value, regardless of the form, without adequate, identifiable, and lawful consideration". That the thing being transferred have "economic value" is therefore an essential element in determining whether or not a transfer constitutes a gift. But, if partners are functioning as a single economic unit, a transfer between

them can no more have “economic value” than would a transfer between two identical bank accounts held by the same person. Therefore, an exchange of tokens, or other transfer, between partners closely enough entangled to give rise to a concern under § 6-6 does not meet a key part of the definition of a gift for ethics purposes under § 2-17.

Accordingly, it is the Opinion of the Ethics Board that when cohabitating partners are very closely knit economically - as evidenced by arrangements such as shared financial accounts, living expenses, and property ownership, combined with an expectation that those arrangements will continue indefinitely - they should be treated as a single economic unit for all purposes under the Ethics Code. Both partners would therefore have an interest in each other’s economic well being sufficient for an impact on one from an action to trigger a duty to recuse for the other under § 6-6(1). Further, an exchange of tokens between such partners could not be deemed to have transferred any meaningful economic value for purposes of determining whether or not a gift had been solicited or accepted under the Ethics Code.