

BLANKROME

TO: Kennett Township Board of Supervisors

FROM: Blank Rome LLP

DATE: April 1, 2022

RE: Pennsylvania Public Official and Employee Ethics Act/
Review of Potential Conflict of Interest Issues

The Board of Supervisors (“Board of Supervisors”), on behalf of Kennett Township, engaged Blank Rome LLP to perform an independent review of the facts and circumstances of certain conflicts of interest that have been alleged against the Township Manager, as well as compliance with Pennsylvania’s Public Official and Employee Ethics Act, 65 Pa.C.S. § 1101 *et seq.* (the “Ethics Act”), in connection with (1) the consolidation of fire and emergency management services (“EMS”), and (2) Kennett Township’s participation in the Kennett Fire and EMS Regional Commission (“KFERC” or the “Commission”).¹

In the course of the review, we collected and reviewed thousands of documents, including relevant emails, letters, and meeting minutes, and interviewed eighteen individuals.² The specific individuals we interviewed are as follows (in alphabetical order):

- Thomas Brady, Chief of Kennett Fire Company;
- Joseph Duffy;
- Peter J. Doehring;
- Carl Francis, EnvisianStrategic;
- Richard Franks, Assistant Chief of Kennett Fire Company;

¹ The scope of our review was limited to the above and did not include an independent assessment of the propriety of any policy decisions made or inherent in the reorganization of fire and EMS or Kennett Township’s participation in the Commission. To the extent that documents or information relating to the reorganization or the Commission were reviewed and considered in preparing this report, such documents or information have been reviewed for context and were considered only to the extent that they were relevant to our findings and conclusions concerning the alleged conflicts of interest. Thus, although it is clear that there are policy disagreements between the complainants and Ratliff, among others, including policy disagreements on issues unrelated to fire and EMS, we have not factored those disagreements into our analysis and reach no conclusions regarding them.

² Document collection and review, and interviews of those who may have relevant information regarding the allegations at hand, are standard procedures in a review of this sort. Mr. Poluka regularly conducts such reviews and internal investigations on behalf of a wide variety of entities. Mr. Beaser regularly advises public, nonprofit, and for-profit entities regarding Ethics Act issues.

- Geoffrey Gamble, Member, Kennett Township Board of Supervisors;
- Michael Guttman;
- Amy Heinrich, Kennett Township Finance/HR Director and Treasurer;
- Whitney Hoffman, former Kennett Township Supervisor;
- Dr. Richard L. Leff, Chair, Kennett Township Board of Supervisors;
- A.J. McCarthy, Chief of Longwood Fire Company;
- Steven Melton, Deputy Chief of Kennett Fire Company;
- Gretchen Porterfield, Executive Assistant to the Township Manager;
- Eden R. Ratliff, Township Manager;
- Gabrielle Ratliff, Executive Assistant to the Chief of Longwood Fire Company;
- Scudder G. Stevens, Vice Chair, Kennett Township Board of Supervisors;
- Cuyler Walker, Chairman of the Commission; and
- Jeff Yetter, President of the Board of Trustees of Kennett Library.³

As a result of our review, we have made various factual findings and conclusions with respect to the conflicts of interest that have been alleged against Ratliff.

- First, we discuss the submissions made to the Commonwealth of Pennsylvania State Ethics Commission (“State Ethics Commission”) and the allegations made against Ratliff therein.
- Second, we provide an overview of KFERC, the relevant fire companies, and the reorganization of fire and EMS in the region.
- Third, we summarize our factual findings with respect to the roles of Ratliff, his wife, and his brother as volunteers of Longwood Fire Company (“LFC”).

³ Matthew Fetick, Mayor, Borough of Kennett Square, and Brenda Mercomes, Council President, Borough of Kennett Square, declined to be interviewed. However, we spoke with Christopher P. Gerber, counsel for the Borough, to ask questions relevant to our review.

- Fourth, we set forth our findings with respect to Gabrielle Ratliff’s employment with LFC.
- Finally, based upon our factual findings, we reach conclusions on a series of five questions regarding whether Ratliff used the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family, or a business with which he or a member of his immediate family is associated such that he had a conflict of interest.

I. FACTUAL FINDINGS

A. The Township Manager and the Alleged Conflicts of Interest

Since September 23, 2019, Ratliff has served as the Manager of Kennett Township. As Township Manager, Ratliff’s duties and responsibilities include creating and administering municipal operating budgets, developing a strategic vision for the Township, implementing a comprehensive asset management program for utility operations, and serving at times as chief administrative official, zoning officer, water authority manager, borough secretary, chief code enforcement officer, and treasurer.⁴

As set forth more fully in Section I.B, in 2020 Ratliff served as an alternate voting member of the Commission on behalf of Kennett Township. Additionally, in 2020 and 2021, Ratliff performed certain volunteer services on behalf of the Commission and the regional fire companies that serve as service providers to the Commission and Kennett Township—Kennett Fire Company (“KFC”), LFC, and Po-Mar-Lin Fire Company (“PML”).

As a starting point, we reviewed the three submissions that were made to the Commonwealth of Pennsylvania State Ethics Commission and that are relevant to our analysis: (1) a formal complaint filed by Peter J. Doehring, a resident of Kennett Township and former candidate for the Board of Supervisors; (2) a letter request for confidential advisory opinion submitted by Ratliff; and (3) a letter request for advisory opinion submitted by Kennett Square Borough. These submissions, and the State Ethics Commission’s responses thereto, are summarized below.

1. The Doehring Complaint

On December 1, 2021, Doehring filed a complaint with the State Ethics Commission (the “Doehring Complaint”) alleging that Ratliff violated the Ethics Act by “us[ing] the authority of his public office and confidential information received through his holding public office for the private pecuniary benefit of himself, at least one member of his immediate family, and a

⁴ See *Administration*, KENNETT TOWNSHIP, PA, <https://www.kennett.pa.us/170/Administration> (last visited Mar. 30, 2022).

business—Longwood Fire Company (LFC)—with which he and two members of his immediate family were closely associated.” The Doehring Complaint attaches a narrative that separates the alleged conflicts into two components. First, the Doehring Complaint states that in 2020 and 2021, Ratliff had a conflict of interest with respect to the reorganization of fire and EMS:

Between 2/3/2021 and 4/15/2021, the KT Board of Supervisors (KT-BOS) voted to implement a series of recommendations, primarily developed and promoted by Ratliff, that resulted in a major reorganization of KT’s Fire and Emergency Management Services (Fire/EMS). Previously, Longwood Fire Company (LFC) provided those services to the eastern half of the KT while Kennett Fire Company (KFC) handled the western half. As a result of this reorganization, LFC ended up with a monopoly of EMS, and a monopoly of Fire dispatching. This reorganization significantly advantaged LFC financially while significantly disadvantaging KFC. Ratliff publicly introduced the idea for such a reorganization at a KT-BOS meeting on 10/20/2020. Subsequently, Ratliff was intensively involved with conducting purportedly unbiased research and leading supposedly good faith negotiations involving KFC, LFC, and the six-municipality Kennett Fire and EMS Regional Commission (KFERC). However, sometime between 10/20/2020 and 4/15/2021, Ratliff, his wife, and brother became regular members of LFC volunteer staff, creating an obvious conflict of interest, given Ratliff’s position. Moreover, Ratliff failed to inform KFC, KT-BOS, KFERC or the public about this conflict until 4/15/2021, the same date the final reorganization step was approved, and he admitted to it only after being questioned by a concerned KT resident. . . . This was a clear conflict of interest since LFC has derived considerable pecuniary advantage from Ratliff’s actions while Ratliff and his family were developing a close and previously undisclosed relationship with LFC. In any case, KFC had been unaware of Ratliff’s relationship with LFC during the reorganization process and were shocked when they found out about it. At a bare minimum, we believe that Ratliff should have first informed KFC, KT-BOS, and KFERC of the close ties he and his family had to LFC, and sought formal approval from all to continue any discussions or investigations of KFC’s performance. Ratliff did nothing of the sort, further compounding this conflict. Unfortunately, KT-BOS has to date taken no steps to hold Ratliff accountable for his conflicts or to reexamine the Fire/EMS reorganization in light of this unethical conduct.

Second, the Doehring Complaint states that Ratliff had a conflict of interest with respect to LFC's subsequent hiring of his wife, Gabrielle Ratliff, in 2021:

On 8/31/2021, LFC advertised for a new paid position of Executive Assistant to the Fire Chief. The online ad specifically stated that "We are hiring an Executive Assistant to aid in our growing operation." and "The Executive Assistant to the Fire Chief will perform secretarial work of a complex nature for the Fire Chief." Further, it stated that "This position involves a high degree of confidential information to which the employee will be held accountable for not disclosing." Sometime after 8/31/2021, Ratliff's wife Gabrielle accepted this position, effective as of 10/28/2021. This has placed her in a key role at a major KT services vendor which has derived significant pecuniary advantage from the Fire/EMS reorganization recently engineered primarily by Ratliff himself. The hiring of Ratliff's wife transpired without LFC, Ratliff, or Ratliff's wife informing KT-BOS or KFERC in advance. This conflict was only discovered accidentally by a KT resident and then communicated to a KT-BOS member and subsequently confirmed by Eden Ratliff in a memo dated 11/8/2021 LFC's employment of Ratliff's wife while Ratliff is KT Manager is another clear conflict of interest since it provides a significant pecuniary benefit to a member of his immediate family in the form of a paid position at a major services vendor to KT. In addition, having Ratliff's wife in a key position at LFC provides Ratliff with an even stronger connection to LFC and in particular, his wife's direct supervisor, LFC's Chief AJ McCarthy. This further compounds the still unresolved conflicts that took place during the reorganization. The new conflict may also establish a pecuniary value for those previous conflicts. As noted above, the 8/31/2021 LFC Executive Assistant job advertisement states specifically that the new position was established because of "our growing operation." But that growth is largely—if not completely—due to the deal that Ratliff himself had recently negotiated. In addition, the job description states that "Preference will be given to applicants with a relevant college degree and who are trained Fire and Emergency Medical responders" (see Appendix 12). This is not a skill normally associated with secretarial work, but it definitely provided LFC a reason to give employment preference to Ratliff's wife, who apparently has such training. In any case, KT-BOS has so far taken no action to address this additional conflict-of-interest brought on by LFC's hiring of

Ratliff[']s wife, much less its impact on the 2021 Fire/EMS reorganization.

On or about December 14, 2021, the State Ethics Commission provided its response to the Doehring Complaint, stating that “[y]our complaint fails to provide sufficient specific information to allow a determination as to whether this matter should be further processed,” and “[s]pecifically, no evidence was presented that Mr. Ratliff used his position to secure employment for his spouse.” Accordingly, “[a]s such, no investigation will be commenced.” We note that, in our discussion with him, Doehring was candid in stating that his complaint was “based on insights” others had shared with him, and not upon any direct evidence of any conflict of interest on the part of Ratliff.⁵

2. Ratliff’s Request for State Ethics Commission Advisory Opinion

On November 30, 2021, apparently at least in part in response to concerns raised with him, Ratliff submitted a request to the State Ethics Commission for a confidential advisory opinion on five questions:

Question #1: In his role as Township Manager, is it a conflict of interest for Eden Ratliff to perform research and analysis, as well as make recommendations on service delivery and funding, as well as other matters that may come before the Commission, for the Kennett Area Fire and EMS Regional Commission considering Eden Ratliff being a volunteer at Longwood Fire Company?

Question #2: In his role as Township Manager of Kennett Township, is it a conflict of interest for Eden Ratliff to perform research and analysis, as well as make recommendations on service delivery and funding, as well as other matters that may come before the Commission, for the Kennett Area Fire and EMS Regional Commission considering Gabrielle Ratliff is employed by Longwood Fire Company?

Question #3: If either Question #1 or Question #2 is a conflict of interest, can the commission waive conflict to continue to allow Eden Ratliff to perform research and analysis, as well as

⁵ Moreover, in our discussions with other citizens, each of them noted that they did not have direct evidence of Ratliff’s having a conflict of interest. Specifically, Guttman stated that his “impression” of the conflict of interest allegations was “based on discussions with people largely after the fact,” and Duffy stated that “if he had direct evidence” of a conflict, then “he’d give it” to us. Mr. Yetter confirmed that Duffy, Guttman, and he were involved in reviewing the Doehring Complaint for factual accuracy. Thus, neither Doehring, Duffy, Guttman, nor Yetter has presented Blank Rome with direct evidence to conclude that Ratliff has or had a conflict of interest in any respect.

make recommendations on service delivery and funding, as well as other matters, to the Commission?

Question #4: If either Question #1 or Question #2 is a conflict, and the Commission cannot waive conflict, can Eden Ratliff perform research and analysis, as well as make recommendations on service delivery and funding and other matters that may come before the Commission as a volunteer and not with resources from Kennett Township?

Question #5: If either Question #1 or Question #2 is a conflict, and the Commission cannot waive conflict, can the Kennett Area Fire and EMS Commission hire Eden Ratliff as an employee to the Commission to perform research and analysis, as well as make recommendations on service delivery and funding and other matters that may come before the Kennett Area Fire and EMS Regional Commission?

On or about December 21, 2021, Brian D. Jacisin, Chief Counsel, State Ethics Commission, provided his Advice of Counsel⁶ (the “Advice of Counsel”) to Ratliff in response to Ratliff’s November 30, 2021 request. A copy of the unredacted Advice of Counsel is attached hereto as **Exhibit A**. Under the Ethics Act, an Advice of Counsel is prospective in nature only; it does not deal with prior conduct. An Advice of Counsel may be issued to government officials to provide them with advice to permit them to take actions that are in compliance with the Ethics Act. *See* 65 Pa.C.S. § 1107(11).

The Advice of Counsel stated that it was answering Ratliff’s questions as to whether he would have a conflict of interest under the Ethics Act in his “capacity as the Township Manager for Kennett Township with regard to providing assistance to the [Commission], which allocates municipal funding to the Longwood Fire Company and two other fire companies where:

(1) [Ratliff] serve[s] as a volunteer Firefighter/Emergency Medical Technician (EMT) with the Longwood Fire Company; and (2) [Ratliff’s] spouse serves as a volunteer Firefighter/EMT with

⁶ Section 1107 of the Ethics Act provides that the powers and duties of the State Ethics Commission include “[p]rovid[ing] written advice to any person or the appointing authority or employer of such person, upon their request with respect to such person’s duties under this chapter. Such advice shall be provided within 21 working days of the request, provided that the time may be extended for good cause. It shall be a complete defense in any enforcement proceeding initiated by the commission, and evidence of good faith conduct in any other civil or criminal proceeding, if the requester, at least 21 working days prior to the alleged violation, requested written advice from the commission in good faith, disclosed truthfully all the material facts and committed the acts complained of either in reliance on the advice or because of the failure of the commission to provide advice within 21 days of the request or such later extended time. The person requesting the advice may, however, require that the advice shall contain such deletions and changes as shall be necessary to protect the identity of the persons involved.” 65 Pa.C.S. § 1107(11). Ratliff provided an unredacted version of the Advice of Counsel to Blank Rome in connection with this review.

the Longwood Fire Company and is employed as the Executive Assistant to the Fire Chief of the Longwood Fire Company.” Advice of Counsel at 1.

The Advice of Counsel found that Ratliff is a public official/public employee subject to the provisions of the Ethics Act and that Ratliff’s spouse is a member of his “immediate family,” as that term is defined in the Ethics Act. Further, the Advice of Counsel found that LFC “is not a business with which [Ratliff is] associated because [he is] not a director, officer, employee, or holder of a financial interest in the Longwood Fire Company.” Advice of Counsel at 6 (emphasis deleted). However, the Advice of Counsel found that LFC is a business with which Ratliff’s spouse is associated in her capacity as an employee of LFC. *Id.*

The Advice of Counsel came to five specific conclusions in response to Ratliff’s questions, as follows:

- In his capacity as the Township Manager or in the capacity of a Commission employee, if he were to be employed by the Commission, Ratliff “would be restricted from using the authority of [his] public position for the private financial benefit of [himself], a member of [his] immediate family such as [his] spouse, or a business with which [Ratliff] or a member of [his] immediate family is associated, such as the Longwood Fire Company.” Advice of Counsel at 6.

- Ratliff would have a conflict of interest under § 1103(a) of the Ethics Act in his capacity as the Township Manager and/or in the capacity of a Commission employee, if he were to be employed by the Commission, “with regard to assisting the Regional Commission by performing research and analysis and making recommendations on service delivery, funding, or other matters that may come before the Regional Commission if: (1) [Ratliff] would be consciously aware of a private pecuniary benefit for [himself, his] spouse, or the Longwood Fire Company; (2) [his] action(s) would constitute one or more specific steps to attain that benefit; and (3) neither the de minimis exclusion nor the class/subclass exclusion to the definition of ‘conflict’ or ‘conflict of interest’ as set forth in the Ethics Act, 65 Pa.C.S. § 1102, would be applicable.” *Id.*⁷

- “In each instance of a conflict of interest, [Ratliff] would be required to abstain fully from participation.” *Id.* at 7.

- “The Regional Commission would not be able to waive any conflict of interest which [Ratliff] might have in [his] capacity as the Township Manager and/or in the capacity of a

⁷ Neither the *de minimis* nor class/subclass exceptions are relevant here. As stated in the Advice of Counsel, the *de minimis* exception applies to an “[a]ction that has a de minimis (insignificant) economic impact,” while the class/subclass exception applies to an action “that affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated.” Advice of Counsel at 2 n.1.

Regional Commission employee, as the Ethics Act does not provide for waiver where a conflict of interest exists.” *Id.*

- “The Ethics Act would not prohibit [Ratliff], in a private capacity as a volunteer and without using Township resources, from assisting the Regional Commission by performing research and analysis and making recommendations on service delivery, funding, or other matters that may come before the Regional Commission.” *Id.*

3. Kennett Square Borough’s Request for Advisory Opinion

On December 15, 2021, the Borough of Kennett Square (“Kennett Square Borough” or the “Borough”) submitted a letter to the State Ethics Commission requesting an advisory opinion on four issues that were similar to those raised in the submissions by Doehring and Ratliff:

Question 1) Does the Township Manager’s advocacy before the Commission for increased municipal member funding constitute a conflict of interest under Section 1103 of the State Ethics Act, in light of his spouse’s employment with one of the recipient fire companies;

Question 2) Are fire/emergency services volunteers required to recuse themselves under Section 1103 from deliberation or advocacy, with regard to their roles as a municipal official of a member, on municipal or Commission decisions that would impact municipal contributions to those fire/emergency services companies;

Question 3) Whether advocacy for Commission funding or support for payments to volunteers be considered a conflict of interest under the Act; and

Question 4) What measures or actions should be implemented by the individuals involved with respect to future discussion, deliberation or vote on actions that would impact contributions to the Commission or the fire and emergency service providers that it funds?

On December 28, 2021, the State Ethics Commission issued its response to the Borough, stating that an advisory opinion could not be issued because the Borough had not established that it had the authority or legal standing to request the advisory opinion. Given the State Ethics Commission’s response that the Borough lacks standing to raise these issues with respect to Ratliff—who is an employee of Kennett Township, not the Borough—our report is not tasked with answering each of the Borough’s four questions. However, to the extent that the issues raised by the Borough are relevant to our analysis of the allegations made by Doehring, those issues will be addressed herein.

B. KFERC, the Fire Companies, and the Reorganization of Fire and EMS

In order to understand the context and factual background within which the alleged conflicts of interest took place, we endeavored to understand the purpose and role of the Commission and the three fire companies that serve the region, as well as the subsequent events that took place in 2020 and 2021 with respect to the reorganization of fire and EMS in the region.

1. The VFIS Report

In the fall of 2015, approximately four years before Ratliff became the Township Manager and prior to the incorporation of the Commission, a regional group comprised of Kennett Township, Kennett Square Borough, East Marlborough Township, Pennsbury Township, and Newlin Township engaged a consulting company, VFIS, to perform a fire and ambulance analysis for KFC, LFC, and PML. The purpose of the engagement was to have VFIS provide a comprehensive study of fire and EMS including, but not limited to, service delivery, operations, vehicles, staffing, funding, facilities, equipment and maintenance of equipment, training of personnel, administration and financials, and risk management pertaining to the fire service. VFIS would then provide recommendations for use by the regional group in making decisions regarding fire and EMS.⁸

In November 2016, VFIS issued its final report, which explained, among other things, the difference between the types of EMS that are available to communities, including Basic Life Support (“BLS”) and Advanced Life Support (“ALS”). According to the VFIS report, “[a] BLS service is licensed by the Pennsylvania Department of Health and must meet certain staffing and response reliability requirements. A BLS is staffed with two personnel trained to the EMT level.” On the other hand, “ALS service is licensed by the Pennsylvania Department of Health and must meet strict regulations. All ALS services must have a Medical Director (Physician) who authorizes the service’s Paramedics to practice care.” VFIS explained that there are two types of ALS vehicles: (1) an ALS squad, which is “an SUV type vehicle that transports a Paramedic to the incident scene who then meets with a BLS service to provide care to patient”; and (2) a mobile intensive care unit (“MICU”), which “is staffed with both an EMT and Paramedic and can provide all levels of care on all types of calls.”

VFIS then provided an overview of the types of EMS available in the Kennett Area, explaining that KFC has a 911 call volume of 1,014 and provides one BLS ambulance for 24 hours per day, seven days per week, while LFC has a 911 call volume of 2,376⁹ and provides one ALS MICU 24 hours per day, seven days per week and one ALS MICU 10 to 12 hours per day, seven days per week. In its analysis, VFIS noted that there would not be any advantages if the

⁸ By the time VFIS issued its final report, the regional group had expanded to include a sixth municipality: Pocopson Township. VFIS collectively refers to these six municipalities as the “Kennett Area.”

⁹ While the VFIS report does not specify, we assume that the call volumes for KFC and LFC are annual volumes.

Kennett Area were to continue with current operations, and that maintaining the status quo would result in dual administrative costs, uncoordinated operational functions, different levels of care, and a continuing increase in costs. It also observed that “portions of the area may receive different service level capability, ALS or BLS, than others for emergency medical calls. The overriding theme from all interested parties was for a consistent level of EMS service to be provided at the ALS service level.” Additionally, VFIS opined that “the nature of the staffing models in use results in more staffing than is actually required and there are more units in service than are necessary.” Ultimately, VFIS made a recommendation to “[d]esignate a single provider of emergency medical services” for the region.¹⁰

2. The Commission’s Discussions Concerning the Consolidation of EMS

Subsequently, on June 28, 2017, the Commission was incorporated, with its members consisting of Kennett Square Borough, East Marlborough Township, Kennett Township, Newlin Township, Pennsbury Township, and Pocopson Township. On September 20, 2017, these same six municipalities entered into an Inter-Municipal Cooperation Agreement to “provide for intermunicipal collaboration and the pooling of municipal resources and funds for the provision of fire, rescue and emergency services” within a specified area to be known as the Kennett Fire and EMS Region.

On February 13, 2018, the Commission held a meeting during which the concept of consolidation of EMS—as previously recommended in the VFIS report—was discussed. Following this meeting, the Commission sent a memorandum to KFC and LFC requesting information from each fire company in order to inform the decision as to how the provision of EMS would be structured going forward. The fire companies’ respective proposals were submitted and presented to the Commission in the summer of 2018.

On November 3, 2018, the Commission voted on a motion “to accept Longwood’s proposal submitted on July 3, 2018 to provide BLS and ALS, subject to the condition that Kennett Fire EMS staff be given priority to be hired to fill additional positions created by Longwood Fire Company.” The Commission voted 5-to-1 on the motion, with Kennett Township as the dissenting vote.

However, Section 2.1 of the Inter-Municipal Cooperation Agreement provides that “[t]he Commission shall not have the authority to reassign territory covered by one of the [fire companies] to another [fire company] without the approval of the governing body of the Municipality in which the respective territory is located.” Therefore, there were no material changes with respect to the provision of fire and EMS in Kennett Township following the Commission’s 5-to-1 vote, because that was a vote of the Commission and not the Kennett Township Board of Supervisors.

¹⁰ See Kennett Area Conceptual EMS/Fire Delivery Model at 75, 76, 84-86.

On November 12, 2019, the Commission held a meeting where the potential for consolidation of services was again raised. Ratliff—who had recently been hired as Township Manager—was in attendance at this meeting, and the minutes reflect that he “noted that it is a common problem in most territories across Pennsylvania where multiple fire companies provide services and that questions are raised whether having separate companies is more efficient than one single company.” Ethan Cramer of Kennett Borough “responded that a study was conducted for the region by an outside consultant and that, while there is no consideration of merging the fire services, the consultant recommended merging EMS into a single provider.” Following this, “[t]here was a discussion concerning whether the fire companies should give priority to developing a region-wide retention and recruitment plan or to restructuring EMS. The consensus on the Commission was that both deserved priority and should be pursued simultaneously, while recognizing the limitations on the time available to the leaders of the fire companies for such purposes.”

The minutes from subsequent Commission meetings reflect that KFC and LFC engaged in discussions in early 2020 regarding the structuring of EMS in the region. Additionally, throughout 2020, Ratliff worked with each of KFC, LFC, and PML to assist each company with their retention and recruitment programs, including to entice current members to remain active volunteers. In August 2020, KFC and LFC discussed the possibility of combining their ambulance subscription programs so that subscribers could receive transport and care from either ambulance service without paying additional costs. The companies also had discussed using the same billing provider so that callers requiring both BLS and ALS would not receive two invoices, one for each company’s services.

3. The Board of Supervisors Votes to Consolidate EMS in Kennett Township

On October 29, 2020, the Board of Supervisors held a Special Meeting during which Ratliff gave a presentation entitled “Emergency Medical Service Delivery.” The presentation referenced the VFIS report and recommended that Kennett Township be served by LFC’s MICU for BLS and ALS. The presentation also noted that LFC’s EMS Budget Expense for 2021 represented cost savings of \$208,210, as compared to KFC’s EMS Budget Expense for 2021.

Following the presentation, Supervisor Hoffman made a motion to authorize a change in the EMS Provider territory to allow LFC “to provide Advanced and Basic Life Support as the first due responder in Kennett Township effective January 1, 2021.” After Supervisor Stevens moved to table the motion and discussion for three months, Supervisor Hoffman moved to table the motion and discussion for one month, with Supervisor Stevens seconding the motion. During public comment, Steven Melton, Deputy Fire Chief of KFC, said that he was disappointed in the way the discussion had gone and with the alliance he felt that Ratliff had formed with LFC, believing that Ratliff had met with LFC a few times. Supervisor Hoffman responded that nothing had been voted on and that the point of the meeting was to have the conversation and determine what to do, while Supervisor Leff added that, while this issue had been discussed before, it had not been discussed publicly at a Board meeting and that everyone had another month to continue discussing the issue to find the best path forward. Supervisor Leff reiterated that the discussion

was “not a knock against any of the providers, but an effort to unify the services to meet the changing times.”

Beginning in early November 2020, Supervisor Hoffman and Ratliff held a series of meetings with KFC and LFC, including joint meetings of the fire companies, to discuss EMS data from 2019 and plans for the provision of EMS going forward. Documentation reviewed during this time also reflects that the fire companies were sharing data with each other. Additionally, on December 2, 2020, the Board of Supervisors met again, this time passing a motion to appoint LFC to supply all ambulance services in Kennett Township starting on March 1, 2021, in order to allow time for both KFC and LFC “to contemplate and submit a proposal to the Township for providing EMS services to the Township.” The motion further stated that, if submitted by January 20, 2021, KFC’s proposal would be reviewed and considered by the Board of Supervisors no later than February 3, 2021, and that if the Board of Supervisors did not accept either company’s proposal, then LFC would begin supplying all ambulance services to the Township on March 1, 2021. However, if the Board of Supervisors accepted the proposal from both fire companies, in whole or in part, then the Board of Supervisors would consider a revised motion regarding ambulance service for the Township.

On January 25, 2021, Ratliff, on behalf of Kennett Township, sent a letter to KFC stating that Supervisor Hoffman and he had

. . . held multiple meetings with Kennett Fire Company leadership individually and jointly with Longwood Fire Company leadership between December 2, 2020 and January 7, 2021. Kennett Fire Company pitched a couple of different ideas for us to consider where Hoffman and I provided feedback. Additionally, a several hour working sessions [sic] was held between both companies where we worked to build a budget for a two-tier Emergency Medical Service delivery model for the region at the request of Kennett Township. The findings in that meeting were that a two-tier EMS model was not more cost effective than deploying two Mobile Intensive Care Units (MICU) from one company.

The letter then noted that KFC

. . . did not formally provide a proposal to Kennett Township to consider on or before January 20, 2021 in accordance with the adopted motion of the Bord [sic] of Supervisors. Accordingly, and consistent with the Fire, Rescue, and Ambulance Services Agreement executed by the Board of Supervisors on January 4, 2021, all first due Advanced Life Support and Basic Life Support coverage will be assigned to Longwood Fire Company effective March 1, 2021.

On January 27, 2021, KFC responded to the Township with a proposed model for a hybrid ALS MICU, BLS ambulance, and an ALS chase car. On January 28, 2021, Ratliff, on behalf of the Township, responded to KFC's proposal and requested additional information regarding costs and the strategy for deployment.¹¹ Our understanding is that the Township did not receive the additional information requested from KFC.

Subsequently, on February 9, 2021, the Commission held a meeting during which Supervisor Leff notified the Commission that LFC would be the EMS provider townshipwide effective March 1, 2021. The minutes from that meeting also reflect that Matthew Eick of LFC reported that LFC would need to add EMS personnel and an ALS unit for the 10:00 p.m. to 6:00 a.m. shift to adequately serve the region, which would result in two LFC MICUs serving the region 24/7.¹²

4. KFC and LFC Seek Funding for Paid Firefighters

During the Commission's meeting on February 9, 2021, Ratliff noted that, at certain times during the daytime shift, KFC had relied upon its paid EMTs to respond to fire calls due to the limited availability of volunteers, and that KFC had asked Ratliff to develop data on the possible need for paid firefighters. Richard Franks, Assistant Chief of KFC, reported that he had had a preliminary meeting with Ratliff and A.J. McCarthy, Chief of LFC, and that the meeting had been productive.

Subsequently, documentation from February 12, 2021 reflects that LFC provided KFC with information relating to LFC's pay scale for career staff and explaining the benefits provided to LFC employees—which appears to have been done in an effort to assist KFC with analyzing its need for paid firefighters.

Following this, on March 5, 2021, KFC sent a letter to the Commission requesting funding for paid firefighters. The letter noted that KFC had "been working with Kennett Township to analyze the Fire and Rescue performance of our company in 2020 when considering turn out time and minimum staffing," and that the "analysis performed by Kennett Township at our request shows that we are failing to adequately respond to 50% of fire and rescue calls annually." The letter further noted that KFC's "failed response rate increases to 75% during Weekday hours 7:00am to 5:00pm. We believe this response rate is unacceptable for our

¹¹ Ratliff's letter also noted that KFC's "proposal was submitted 7 days past the deadline per action of the Board of Supervisors on December 2, 2020," but that "the Township is happy to respond in the spirit of regional cooperation."

¹² Around this same time period, documentation we reviewed reflects that Ratliff was working with the fire companies, at the Commission's request, on at least two projects: (1) completing an analysis of the state of volunteers at each company so that the data could inform how to allocate money for recruitment and retention; and (2) developing an understanding of each company's internal policies governing service delivery as related to fire and rescue services.

company and the region and want to work with the Commission to address this critical public safety crisis.”

The letter went on to explain that, “[i]n the spirit of regional cooperation Kennett Fire Company has met with Longwood Fire Company to determine several items relevant to these discussions,” including the cost of hiring paid firefighters to address the inadequate response rate.

On March 9, 2021, the Commission held a meeting during which Ratliff presented the findings of his “Analysis of Kennett Fire Company Fire & Rescue Response Performance” that had been requested by KFC. The analysis concluded that “the challenge appears to be with volunteer performance or availability. Kennett Fire Company frequently responds to incidents with less than the required minimum staffing using volunteers who are either inadequately trained, are minors, or with an apparatus that has less than three responders.”¹³

The discussion then turned to Franks’s notification of the Commission that KFC would need paid firefighter staffing to meet the standards for delivery of service. Franks noted that Kennett Fire Company had been relying on cross-trained EMTs to respond to fire calls when volunteers were not available. The minutes from the meeting also reflect that McCarthy stated that he had been asked by Kennett Township whether LFC could support KFC on weekdays during the daytime shift, and he confirmed that this would be possible. Ratliff noted that this would be similar to the model that LFC and PML have in place, and that Ratliff would continue the discussion about ways to address coordination between the fire companies and would share information on those developments at the next Commission meeting.

On April 10, 2021, Ratliff sent the Commission and the fire companies a Policy Briefing Summary analyzing “Fire Response Performance in Western Kennett Twp and Region.” The document makes five recommendations based upon the analyses/proposals submitted by LFC and KFC:

- 1) The Kennett Township fire territory be reassigned to Longwood Fire Company as a primary service provider in accordance with the fire coverage and response plan outlined within the Longwood proposal.
 - a. Kennett paid firefighters would dually dispatch in the western half of Kennett Township on high acuity fire calls as determined by the fire companies.

¹³ Several of the people with whom we spoke lamented the decline in volunteers. For example, Chief McCarthy noted that “volunteers are a dying breed,” and KFERC Chairman Walker stated that, currently, there are approximately only ten percent of the volunteer firefighters in the Commonwealth than had existed in 1980.

- b. Kennett volunteer responders would respond to all calls in the western half of Kennett Township.
- 2) The Kennett Fire Company officially retire the Kennett Fire Company EMS Operations to allow for funding to be allocated to paid fire.
- 3) The Kennett Regional Fire and EMS Commission increase the annualized funding to Kennett Fire Company No. 1 to include two paid firefighters and one paid supervisor to allow for weekday fire coverage. Total estimated cost \$254,720.
- 4) The Kennett Regional Fire and EMS Commission increase the annualized funding to Longwood Fire Company No. 1 to include one additional paid firefighter for weekday coverage. Total estimated cost \$74,100.
- 5) The above recommendations be effective May 3, 2021.

The Commission met thereafter on April 13, 2021, during which Ratliff's Policy Briefing Summary was discussed. Franks reported that the members of KFC had met the previous evening to discuss the proposal and that the members had expressed "overwhelming support" for the proposal, and would take formal action on the proposal on April 27, 2021. Similarly, McCarthy stated that LFC strongly supported the proposal and that he believed it would enable the fire companies to collaborate on maximizing efficiencies in service delivery, costs, capital purchases, and retention and recruitment. After detailed discussion, the Commission unanimously approved additional funding to both KFC and LFC in the annualized amounts of \$254,720 and \$74,100, respectively.

At the next Commission meeting on May 11, 2021, Franks reported that KFC's members had voted unanimously (with two abstentions) in favor of the proposal for a unified command structure with LFC. Franks also announced that KFC would retire its ambulance effective August 1, 2021."¹⁴

During the next Commission meeting held on June 8, 2021, Franks reported that KFC had hired paid firefighters, and both KFC and LFC noted the collaborative efforts between the two fire companies. The minutes from the meeting also reflect that Ratliff "reported that, at Po-Mar-Lin's request, he is reviewing their service delivery as he has done for Kennett Fire

¹⁴ During this meeting, McCarthy reported that KFC and LFC had "started joint regional training during the daytime shift for paid staff and, if available, volunteers . . . McCarthy reported that Kennett and Longwood are engaged in constructive communications over several aspects of the reorganization. These include benchmarking, but matters such as this are in flux while the transition continues."

Company. He has received data on volunteers from all three fire companies on their volunteers, including training and experience, and is working on prior year data of response times and applicable service delivery standards.” The minutes from a later Commission meeting on October 12, 2021 reflect that, “[a]t Po-Mar-Lin’s request, Eden Ratliff prepared a response analysis of the Company. Ratliff summarized the results and recommended that coverage on nights and weekends be enhanced.”

5. Kennett Township Restructures EMS

During the time that KFC and LFC were seeking funding for paid firefighters, Kennett Township worked to reorganize the provision of EMS to Township residents. Specifically, on April 10, 2021, Ratliff presented a policy briefing to the Board of Supervisors which explained that the analysis of fire responses for KFC in 2020, which was to assist in the determination of KFC’s need for paid firefighters, identified significant response performance deficiencies for KFC. The identification of these issues prompted Kennett Township to seek proposals from KFC and LFC on how to address the deficiencies.

Following the receipt of each fire company’s proposal, the Board of Supervisors held a Special Meeting during which it passed a motion to adopt a proposed Fire, Rescue, and Ambulance Services Agreement with LFC and KFC effective May 3, 2021. Specifically, under the Fire, Rescue, and Ambulance Services Agreement, to which both LFC and KFC are a party, the Township designated LFC as the primary fire, rescue, and ambulance protection service provider to the residents of the Township and their property, with LFC to utilize KFC in the performance of those services. Although the Commission is not a party to the agreement, the agreement notes that both LFC and KFC will be paid for performing these services through the Commission.

During the public comment section of the Board of Supervisors’ Special Meeting on April 15, 2021, KFC’s Fire Chief Thomas Brady stated his belief that the reorganization of services “increases KFC’s chances of survival.” KFC’s Deputy Chief, Steven Melton, expressed his belief that “with this decision tonight, KFC has another 150 years of existence in the future,” and that “this gives KFC the structure to continue, to grow, and to continue doing what they like doing best which is helping people.” Melton also noted that, “[w]hile the members of the KFC still need to vote on this, . . . he personally believes this is a huge step for his company, LFC, and the whole regional Commission.”

C. Ratliff’s Role as a Volunteer of LFC

The Special Meeting on April 15, 2021 is also important because the Doehring Complaint refers to this meeting as the first time that Ratliff

publicly admitted . . . that he, along with his wife and brother, had for some time been volunteer staff at LFC. This was a clear conflict of interest since LFC has derived considerable pecuniary advantage from Ratliff’s actions while Ratliff and

his family were developing a close and previously undisclosed relationship with LFC. In any case, KFC had been unaware of Ratliff's relationship with LFC during the reorganization process and were shocked when they found out about it.

During the meeting, Township resident Duffy asked Ratliff if Ratliff would become a volunteer for LFC, to which Ratliff responded that he, his wife, and his "little brother" were all volunteers at LFC.

In the course of our review, we sought to determine whether, as was alleged in the Doehring Complaint, the above-referenced April 15, 2021 meeting was, in fact, the first time Ratliff had made clear his and his family members' volunteer positions with LFC. Our review finds that the allegation is incorrect and that the facts show that Ratliff informed each member of the Board of Supervisors at the end of 2020, before Ratliff began to volunteer for LFC.

On December 23, 2020, Ratliff had separate meetings with Supervisor Leff and Supervisor Hoffman to inform them that he was considering becoming a volunteer member of LFC. Neither had any objection to Ratliff's volunteering for LFC. Next, on December 26, 2020, during a walk Ratliff took with Supervisor Stevens, Ratliff stated that he would not be Kennett Township's alternate voting delegate to the Commission in 2021 and that he was considering becoming a volunteer for LFC. Ratliff recalls that Supervisor Stevens responded, "that seems like a good use of your time," and that Stevens did not raise any concerns. Stevens likewise confirmed during our discussion that he "wasn't concerned about [Ratliff's] volunteering." Following these discussions with the Supervisors, Ratliff submitted his membership application to LFC on December 30, 2020. The applications for Ratliff's wife and brother were submitted on or about January 7, 2021.

On January 22, 2021, Ratliff confirmed with the Board of Supervisors that he and his wife would be volunteering for LFC. On February 18, 2021, Ratliff was voted into the membership of LFC and did his first "ride along" with LFC the following day. Gabrielle Ratliff was not voted into LFC's membership until March 18, 2021, while Zach Ratliff was not voted into the membership until April 16, 2021.

Although the Doehring Complaint points to April 15 as the first time that Ratliff publicly disclosed the volunteer positions held by himself, his wife, and his brother, and that KFC was shocked when it found out, our interviews with the Supervisors and various members of the fire companies and the Commission have revealed that Ratliff's volunteer position was publicly known months prior to April 15, 2021. For example, the Commission's Chairman, Cuyler Walker, recalls Ratliff mentioning his volunteer position at the beginning of one of the Commission meetings in early 2021. Chairman Walker noted that he did not believe Ratliff's volunteer service "was even seen as relevant," and "it never remotely dawned on [him] that this would reflect a conflict of interest." It is also our understanding that KFC knew that Ratliff was volunteering for LFC either before or shortly after Ratliff was voted into LFC's membership. Ratliff recalls that he informed Melton that he was considering becoming a volunteer for LFC and that Melton did not object.

D. Gabrielle Ratliff's Employment with LFC

In the course of our review, we learned that LFC had contemplated hiring an assistant for at least the past few years, but had kept cutting this item from its budget. Later, on August 31, 2020, McCarthy sent a letter to the Commission stating, in pertinent part:

You will note an increase in our administrative payroll. That will now include the EMS Captain's payroll and associated expenses as well as additional hours for an administrative assistant in our business office.

In the fall of 2020, McCarthy offered the assistant position to a colleague who was then employed by another company. The colleague was pregnant at the time and was scheduled to go out on maternity leave, and informed McCarthy that she might receive a promotion at her current job upon her return from maternity leave. In the late spring or early summer of 2021, the colleague received the promotion at her existing job, so McCarthy told her not to accept the offer for the administrative assistant position.

Subsequently, on or about August 31, 2021, LFC advertised on its website that it was seeking qualified candidates for employment as Executive Assistant to Fire Chief. Eden Ratliff's wife, Gabrielle Ratliff, who was a volunteer member of LFC at the time, learned about the position through her volunteer membership and applied with a resume and cover letter at or around the time the position was announced.

LFC received nine applications for the position and, after narrowing down the resumes, interviewed three candidates, including Gabrielle Ratliff. There were four people on the interviewing panel: Vice President Michael Castro, Captain Timothy Moore, Business Manager Lori Kaluzny, and Fire Sergeant Brandon Fuller. Thereafter, Gabrielle Ratliff was offered the position and formally hired on October 28, 2021. The salary for the position is approximately \$65,000 per year with two weeks' vacation.¹⁵

Two days prior to the hiring, on October 26, 2021, the Commission held a Special Budget Meeting during which Supervisor Leff presented a two-page PowerPoint summarizing the operational and financial changes that had occurred with the support of the Commission in 2021. His analysis focused upon the impact of the additional paid firefighters, the consolidation of the ambulance service, and the impacts of inflation on materials and equipment, especially those necessary to the safety and health of first responders and the public. While Ratliff attended this meeting and recalls making a comment about allocation percentages, he had to leave the meeting early to attend an EMS training program. During the meeting, the Commission unanimously

¹⁵ In the course of our interviews, one interviewee noted his belief that the "position was engineered" for Gabrielle Ratliff, and another interviewee stated that the "job posting seemed to specify [Gabrielle's] height, weight, and hair color." However, we found no evidence to support these beliefs. Moreover, McCarthy explained the value and importance of having an assistant that was dually trained in administrative work and EMS.

approved a motion to increase the municipal funding to the Commission for 2022 by 30 percent above the 2021 municipal funding.

On November 3, 2021, the Board of Supervisors held a meeting at which Ratliff announced the increase in Kennett Township's funding to the Commission:¹⁶

Per the Kennett Regional EMS Commission meeting held on October 26, 2021, the Kennett Township contribution for 2022 will be \$746K, an increase of \$180K [32%] from the 2021 Budget.

The minutes from the meeting state that the funding increase is tied to the Commission's overall budget increase of \$591,000, which is largely due to budgeting for paid firefighters (four firefighters at \$125,000 each).

On November 8, 2021, Eden Ratliff sent an email to the Board of Supervisors, with a copy to KFERC Chairman Walker, stating that his wife was now employed with LFC, effective October 28, 2021, and abstaining from further work for the Commission:¹⁷

As you know, from time to time I have provided research and analysis to the Kennett Fire and EMS Regional Commission to assist them in decision making processes that they embark upon. My work has been at the approval of the majority of the Board of Supervisors.

Gabby's new employment could lead someone to believe that there is a potential for a conflict of interest due to the work I perform for the Commission. While I believe the potential presence of a conflict may not be rooted in facts, it is my opinion that any potential conflict of interest needs to be handled appropriately. As such, I am abstaining from performing any work including analysis, research, and providing recommendations, to the Kennett Fire and EMS Regional Commission until the Board of Supervisors and I can professionally address any potential conflict.

¹⁶ The funding is set by the Commission pursuant to the terms of the Inter-Municipal Cooperation Agreement. In 2021, Ratliff was no longer an alternate voting delegate to the Commission on behalf of Kennett Township, and therefore had no voting rights or decision-making authority in setting the Commission's funding levels.

¹⁷ Ratliff promptly informed the Commission before its next meeting and recused himself from providing further volunteer services to the Commission eleven days after his wife began her employment with LFC. Our understanding is that he did not perform any work for the Commission after his wife began her employment with LFC.

On December 14, the Commission held a meeting that Ratliff did not attend. The minutes from the meeting reflect, in pertinent part, that, “[o]n November 9, 2021, Ratliff notified the Commission of his decision to temporarily curtail his services to the Commission due to the fire and ambulance services he and his wife provide as volunteer firefighters and ambulance providers at Longwood Fire Company and his wife’s previously-reported recent employment in an administrative position at Longwood Fire Company.”

The minutes further state that “[t]he members of the Commission reviewed the circumstances and discussed the implications to the Commission of Ratliff’s decision. The Commission considered these facts to be of particular significance: (1) Ratliff’s relationships with Longwood Fire Company had been fully disclosed to the Commission contemporaneously with their initiation, (2) neither Ratliff nor his wife had authority to allocate or distribute Commission funds to Longwood Fire Company, (3) Ratliff’s pro bono analysis, research and recommendations were constructive and beneficial to the Commission, and (4) none of the members of the Commission found Ratliff’s relationships with Longwood Fire Company to constitute a conflict of interest in relation to the Commission.”

After discussion, the Commission passed the following motion: “(i) continuing to receive Ratliff’s uncompensated services is in the Commission’s best interest, is for its own benefit, and is fair and reasonable and (ii) (to avoid any uncertainty in the event a party with jurisdiction over the matter subsequently determines a conflict of interest exists,) any conflict of interest pertaining to the Commission arising out of Ratliff’s existing relationships with Longwood Fire Company and his uncompensated services to the Commission is hereby waived.” All members of the Commission voted in favor, with Leff recusing himself.¹⁸

II. ANALYSIS AND CONCLUSIONS

Under the scope of work for which Blank Rome was retained, and based upon the foregoing factual findings and various submissions to the State Ethics Commission, the specific relevant issues to which we are to respond are as follows:

- 1) Did Ratliff have a conflict of interest with respect to the reorganization of fire and EMS in Kennett Township?
- 2) Prior to his wife’s employment by LFC, did Ratliff’s serving as a volunteer member of LFC beginning on February 18, 2021 create a conflict of interest regarding his provision of volunteer assistance to the Commission?

¹⁸ The issue of the purported waiver by the Commission is beyond the scope of our inquiry here. However, as quoted above, the Advice of Counsel found that the Commission “would not be able to waive any conflict of interest which [Ratliff] might have in [his] capacity as the Township Manager and/or in the capacity of a Regional Commission employee, as the Ethics Act does not provide for waiver where a conflict of interest exists.” Advice of Counsel at 7.

- 3) Did the fact that Ratliff's wife and brother began serving as volunteer members of LFC beginning on March 18, 2021 and April 16, 2021, respectively, create a conflict of interest regarding Ratliff's provision of volunteer assistance to the Commission?
- 4) Did Ratliff use his position as Township Manager in order to arrange for his wife's employment by LFC?
- 5) Is Ratliff prohibited from providing additional assistance to the Commission during the term of his wife's employment by LFC?

The Ethics Act defines "conflict" or "conflict of interest" as the "[u]se by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a de minimis economic impact" 65 Pa.C.S. § 1102. The Ethics Act, in turn, defines "[a]uthority of office or employment" as "[t]he actual power provided by law, the exercise of which is necessary to the performance of duties and responsibilities unique to a particular public office or position of public employment." *Id.* In other words, "the public official must 'use' his public office to obtain financial gain." *Kraines v. Pennsylvania State Ethics Comm'n*, 805 A.2d 677, 681 (Pa. Commw. Ct. 2002). Although the Ethics Act does not define the term "use," the Supreme Court of Pennsylvania has recognized that "use" requires "action by a public official that in some way facilitates his receipt of compensation to which he is not entitled." *Sivick v. State Ethics Comm'n*, 238 A.3d 1250, 1260 (Pa. 2020) (quoting *Kistler v. State Ethics Comm'n*, 22 A.3d 223, 229 (Pa. 2011)). Finally, the Ethics Act defines "[b]usiness with which he is associated" as "[a]ny business in which the person or a member of the person's immediate family is a director, officer, owner, employee or has a financial interest." *Id.*

With these definitions in mind, we now conclude as follows.

• **1) Did Ratliff have a conflict of interest with respect to the reorganization of fire and EMS in Kennett Township?**

Our conclusion is that Ratliff did not have a conflict of interest with respect to the reorganization of fire and EMS in Kennett Township. This is based upon our factual findings that there is no evidence that Ratliff used the authority of his office or employment or any confidential information received through his office or employment for the private pecuniary benefit of himself, a member of his immediate family, or a business with which he or a member of his immediate family is associated.

The timeline of events shows that the issue of consolidation of EMS dates back at least as far as 2016, when VFIS made that recommendation in its report. This issue was then considered

and voted upon by the Commission in 2018. These actions far predate Ratliff's hiring in September 2019 or his subsequent involvement with the Commission. Additionally, Ratliff was not a voting member of the Commission in 2021 when the critical decisions regarding funding were made, and he did not and does not have voting power on Kennett Township's Board of Supervisors.¹⁹ Rather, the actions of the Board of Supervisors and the Commission do not involve the use of Ratliff's authority of his office.

Finally, there is no evidence of any pecuniary benefit to Ratliff, a member of his immediate family, or a business with which he or a member of his immediate family is associated. Ratliff and his family were volunteer members of LFC, on their own time and not as part of Ratliff's duties as Township Manager, throughout most of 2021. They performed unpaid services to the community. Any meals or equipment that they received while they were volunteering would be considered, at best, as having a *de minimis* economic impact and would be part of being a volunteer firefighter and EMS volunteer.

The critical decisions both by the Commission and by the Kennett Township Board of Supervisors with respect to the reorganization of EMS were made prior to Gabrielle Ratliff's hiring by LFC on October 28, 2021. Further, prior to Gabrielle's hiring, none of the Ratliffs was a "director, officer, owner, employee or [had] a financial interest" in LFC, such as would be required to determine that LFC is a business with which Ratliff is associated. *Id.* § 1102.

Accordingly, we conclude that Ratliff did not have a conflict of interest with respect to the reorganization of fire and EMS in Kennett Township.

• **2) Prior to his wife's employment by LFC, did Ratliff's serving as a volunteer member of LFC beginning on February 18, 2021 create a conflict of interest regarding his provision of volunteer assistance to the Commission?**

Our conclusion is that Ratliff's serving as a volunteer member of LFC prior to his wife's employment by LFC did not create a conflict of interest regarding his provision of volunteer assistance to the Commission. For most of the same reasons set forth above, there is no evidence that Ratliff used the authority of his office or employment or any confidential information received through his office or employment for the private pecuniary benefit of himself, a member of his immediate family, or a business with which he or a member of his immediate family is associated.

Ratliff provided significant assistance to the Commission before he began providing volunteer firefighting and EMS to LFC. Again, he, his wife, and brother were volunteer, unpaid

¹⁹ We note, further, that, in addition to Supervisor Stevens's opposition, a member of the Kennett Township staff informed us that Supervisors Hoffman and Leff had "heated discussions" regarding whether the reorganization should proceed. We point this out to state the simple fact that Ratliff, regardless of the research he did or his personal opinions, had no authority to legally mandate the reorganization, and the Board of Supervisors, as is apparent from our summary above, had vigorous debates and discussions about the merits of the matter.

members of LFC throughout most of 2021. Any meals or incidental equipment they received while providing volunteer services would have only a *de minimis* economic impact and would be part of being a volunteer firefighter and EMS volunteer. And prior to October 28, 2021, none of the Ratliffs were a director, officer, owner, employee, or an individual with a financial interest in LFC, such as would be required to determine that LFC is a business with which Ratliff is associated.

We think it important to emphasize that this issue (and others that we have reviewed) generally involve Ratliff providing services to the community both in assisting the Commission's important work, and, individually, on his own time, providing firefighting and EMS to LFC and thus to the community. Given the ongoing shortage (and shrinkage) of qualified firefighting and EMS volunteers, it is ironic that Ratliff has faced criticism for working as an unpaid volunteer to assist the community with fire and rescue.

In any event, again, we conclude that Ratliff's serving as a volunteer member of LFC prior to his wife's employment by LFC did not create a conflict of interest regarding his provision of volunteer assistance to the Commission.

• **3) Did the fact that Ratliff's wife and brother began serving as volunteer members of LFC beginning on March 18, 2021 and April 16, 2021, respectively, create a conflict of interest regarding Ratliff's provision of volunteer assistance to the Commission?**

We conclude that service by Ratliff's wife and brother as volunteer members of LFC did not create a conflict of interest regarding Ratliff's provision of volunteer assistance to the Commission. The analysis set forth above is equally applicable to this third issue.

Based upon our review of relevant documents and information, we have been unable to find, and have not been presented with, any basis to conclude that Ratliff used the authority of his office or employment or any confidential information received through his office or employment for the private pecuniary benefit of himself, a member of his immediate family, or a business with which he or a member of his immediate family is associated.

Ratliff's volunteer assistance to the Commission never took place at a time when he or a member of his immediate family was "associated" with LFC, as that term is understood in the Ethics Act. Although Gabrielle Ratliff began working for LFC on October 28, 2021, thereby satisfying the "associated business" requirement, Eden Ratliff recused himself from providing further services to the Commission on November 8, 2021, which predated the next Commission meeting. Further, our understanding is that Ratliff did not perform any services for the Commission after October 28, 2021.

Thus, our conclusion is that service by Ratliff's wife and brother as volunteer members of LFC did not create a conflict of interest regarding Ratliff's provision of volunteer assistance to the Commission.

- **4) Did Ratliff use his position as Township Manager in order to arrange for his wife’s employment by LFC?**

As to the fourth issue—whether Ratliff used his position as Township Manager in order to arrange for his wife’s employment by LFC—our conclusion is no. There is simply no evidence that LFC hired Gabrielle Ratliff as a *quid pro quo* or as a favor to Eden Ratliff.

The Doehring Complaint states that “LFC’s employment of Ratliff’s wife while Ratliff is KT Manager is another clear conflict of interest since it provides a significant pecuniary benefit to a member of his immediate family in the form of a paid position at a major services vendor to KT.” We agree with the opinion of the State Ethics Commission that, because LFC is a business with which Gabrielle Ratliff is associated in her capacity as an employee, Eden Ratliff would be restricted from using the authority of his position for the private financial benefit of himself, a member of his immediate family such as his spouse, or a business with which he or a member of his immediate family is associated. However, there is no evidence that Ratliff has used any such authority for private financial gain. Going forward, Ratliff should take all necessary actions to ensure that he does not intentionally or inadvertently use the authority of his office or employment, or any confidential information received through his office or employment, for the private pecuniary benefit of himself, Gabrielle Ratliff, or LFC.

- **5) Is Ratliff prohibited from providing additional assistance to the Commission during the term of his wife’s employment by LFC?**

Based on the Advice of Counsel and our reading of the Ethics Law, we conclude that Ratliff is not prohibited from providing additional assistance to the Commission during the term of his wife’s employment by LFC, *so long as he provides such assistance “in a private capacity as a volunteer and without using Township resources.”* Advice of Counsel at 7 (emphasis added).

We agree with the Advice of Counsel that the Ethics Act does not prohibit someone, in his or her private capacity as a volunteer and without using Township resources, from assisting the Commission by performing research and analysis and making recommendations on service delivery, funding, or other matters that may come before the Commission. However, we anticipate that Ratliff’s providing such services without using *any* Township resources, as a practical matter, would be difficult at best.²⁰ We also anticipate that Ratliff’s resumption of volunteer services to the Commission would lead to more public concern and that his doing so would be a diversion to the Board of Supervisors and to Ratliff in his position as Township Manager. Therefore, we recommend (as a policy matter and not as a matter of law) that

²⁰ As noted above, Ratliff’s provision of such services to the Commission prior to his wife’s employment by LFC was not a conflict of interest.

consideration be given to Ratliff not resuming the provision of volunteer assistance to the Commission so long as his wife is employed by LFC.

For the foregoing reasons, we conclude that Ratliff did not have a conflict of interest with respect to any of these issues.

EXHIBIT A

ADVICE OF COUNSEL 21-567,
PENNSYLVANIA STATE ETHICS COMMISSION,
ISSUED ON DECEMBER 21, 2021



PHONE: 717-783-1610
TOLL FREE: 1-800-932-0936

STATE ETHICS COMMISSION
FINANCE BUILDING
613 NORTH STREET, ROOM 309
HARRISBURG, PA 17120-0400

FACSIMILE: 717-787-0806
WEBSITE: www.ethics.pa.gov

ADVICE OF COUNSEL

December 21, 2021

To the Requester:

21-567

Dear Mr. Eden R. Ratliff:

This responds to your submission received November 30, 2021, by which you requested a confidential advisory from the Pennsylvania State Ethics Commission (Commission), seeking guidance as to the issue presented below:

Issue:

Whether, pursuant to Section 1103(a) of the Public Official and Employee Ethics Act (Ethics Act), 65 Pa.C.S. § 1103(a), you would have a conflict of interest in your capacity as the Township Manager for Kennett Township with regard to providing assistance to the Kennett Area Fire and EMS Regional Commission, which allocates municipal funding to the Longwood Fire Company and two other fire companies, where: (1) you serve as a volunteer Firefighter/Emergency Medical Technician (EMT) with the Longwood Fire Company; and (2) your spouse serves as a volunteer Firefighter/EMT with the Longwood Fire Company and is employed as the Executive Assistant to the Fire Chief of the Longwood Fire Company?

Brief Answer: You would have a conflict of interest with regard to providing assistance to the Kennett Area Fire and EMS Regional Commission in your capacity as the Township Manager if: (1) you would be consciously aware of a private pecuniary benefit for yourself, your spouse, or the Longwood Fire Company, which is a business with which your spouse is associated in her capacity as an employee; (2) your action(s) would constitute one or more specific steps to attain that benefit; and (3) neither of the statutory exclusions to the

(CONFIDENTIAL – NOT TO BE DISSEMINATED TO THE PUBLIC)

definition of “conflict” or “conflict of interest” as set forth in the Ethics Act, 65 Pa.C.S. § 1102, would be applicable.¹

Facts:

You request a confidential advisory from the Commission based upon the following submitted facts:

You are the Township Manager for Kennett Township (Township), Chester County, Pennsylvania. The Township is a Second Class Township with a three-Member Board of Supervisors.

The Kennett Area Fire and EMS Regional Commission (Regional Commission) was formed by six municipalities, including the Township, pursuant to the Kennett Fire and EMS Region Inter-Municipal Cooperation Agreement (Agreement). Each municipality appoints one Commissioner of the Regional Commission and one Alternate Commissioner to act in the stead of the municipality’s appointed Commissioner when necessary. Two Township Supervisors serve as the Township’s appointees to the Regional Commission.

Fire, rescue, and EMS services are provided to the six municipalities by three fire companies (the Service Providers), including the Longwood Fire Company. The primary function of the Regional Commission is to interface with the Service Providers and allocate municipal funding to the Service Providers for their operational and capital needs. You have submitted a copy of the Agreement, which provides, in pertinent part, that each Service Provider shall continue to be a separate, independent legal entity with its own governance structure and that each Service Provider shall not be deemed to be an agent of the Regional Commission or any of the six municipalities.

The Regional Commission has no staff, and its Commissioners are not career personnel. You do not serve in any formal role with the Regional Commission. The Township Board of Supervisors has allowed you to perform research and analysis for the Regional Commission to assist it in addressing various matters, including fire and EMS response, response structure, and municipal funding. At times you make recommendations to the Regional Commission based on your research and analysis. Some of the work that you have performed has led to significant changes in the way in which services are delivered and funded. Your work product for the Regional Commission is completed during your Township work hours and through the use of Township resources, including Township computers and staff.

The Longwood Fire Company is a nonprofit 501(c)(3) corporation. The Regional Commission provides funding for 38% of the Longwood Fire Company’s budget, which is set by the Fire Chief and Board of Directors.

¹ Action that has a de minimis (insignificant) economic impact or that affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated, does not constitute a conflict of interest.

You serve as a volunteer Firefighter/EMT with the Longwood Fire Company. You do not serve in any other capacity (such as Board Member, administrative team member, or line officer) with the Longwood Fire Company.

Your spouse, Gabrielle Ratliff, serves as a volunteer Firefighter/EMT with the Longwood Fire Company. Your spouse is not a Board Member or line officer of the Longwood Fire Company. On October 27, 2021, your spouse was hired to be the Executive Assistant to the Fire Chief of the Longwood Fire Company. The position of Executive Assistant is not funded by the Regional Commission. You state that you have recused yourself from performing any work for the Regional Commission due to the appearance of a conflict of interest in relation to your spouse's employment with the Longwood Fire Company.

Based upon the above submitted facts, you pose the following questions with regard to your ability to provide assistance to the Regional Commission by performing research and analysis and making recommendations on service delivery, funding and other matters that may come before the Regional Commission:

1. Would your service as a volunteer Firefighter/EMT with the Longwood Fire Company cause you to have a conflict of interest in your capacity as the Township Manager with regard to providing assistance to the Regional Commission;
2. Would your spouse's employment with the Longwood Fire Company cause you to have a conflict of interest in your capacity as the Township Manager with regard to providing assistance to the Regional Commission;
3. Would the Regional Commission be able to waive any conflict of interest which you might have so that you would be permitted to provide assistance to the Regional Commission;
4. If the Regional Commission cannot waive any conflict of interest which you might have, would you be permitted to provide assistance to the Regional Commission as a volunteer and not with Township resources; and
5. If the Regional Commission cannot waive any conflict of interest which you might have, would you be able to provide assistance to the Regional Commission if you would be hired as an employee of the Regional Commission.

Discussion:

Pursuant to Sections 1107(10) and 1107(11) of the Ethics Act, 65 Pa.C.S. §§ 1107(10), (11), advisories are issued to the requester based upon the facts that the requester has submitted. In issuing the advisory based upon the facts that the requester has submitted, the Commission does not engage in an independent investigation of the facts, nor does it speculate as to facts that have

(CONFIDENTIAL – NOT TO BE DISSEMINATED TO THE PUBLIC)

not been submitted. It is the burden of the requester to truthfully disclose all the material facts relevant to the inquiry. 65 Pa.C.S. §§ 1107(10), (11). An advisory only affords a defense to the extent the requester has truthfully disclosed all the material facts.

Section 1103(a) of the Ethics Act provides:

§ 1103. Restricted activities

(a) Conflict of interest. -- No public official or public employee shall engage in conduct that constitutes a conflict of interest.

65 Pa.C.S. § 1103(a).

The following terms related to Section 1103(a) are defined in the Ethics Act as follows:

§ 1102. Definitions

“Conflict” or “conflict of interest.” Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated.

“Authority of office or employment.” The actual power provided by law, the exercise of which is necessary to the performance of duties and responsibilities unique to a particular public office or position of public employment.

“Immediate family.” A parent, spouse, child, brother or sister.

“Business.” Any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust or any legal entity organized for profit.

(CONFIDENTIAL – NOT TO BE DISSEMINATED TO THE PUBLIC)

“Business with which he is associated.” Any business in which the person or a member of the person's immediate family is a director, officer, owner, employee or has a financial interest.

65 Pa.C.S. § 1102.

Subject to the statutory exclusions to the Ethics Act’s definition of the term “conflict” or “conflict of interest” (*i.e.*, the “de minimis exclusion” and the “class/subclass exclusion”), 65 Pa.C.S. § 1102, a public official/public employee is prohibited from using the authority of public office or confidential information received by holding such a public position for the private pecuniary (financial) benefit of the public official/public employee himself, any member of his immediate family, or a business with which he or a member of his immediate family is associated.

In each instance of a conflict of interest, the public official/public employee would be required to abstain from participation. The abstention requirement would extend to any use of authority of office including, but not limited to, discussing, conferring with others, and lobbying for a particular result. Juliante, Order 809.

Per the Pennsylvania Supreme Court’s decision in Kistler v. State Ethics Commission, 610 Pa. 516, 22 A.3d 223 (2011), in order to violate Section 1103(a) of the Ethics Act, a public official/public employee:

... must act in such a way as to put his [office/public position] to the purpose of obtaining for himself a private pecuniary benefit. Such directed action implies awareness on the part of the [public official/public employee] of the potential pecuniary benefit as well as the motivation to obtain that benefit for himself.

Kistler, *supra*, 610 Pa. at 523, 22 A.3d at 227. To violate Section 1103(a) of the Ethics Act, a public official/public employee “must be consciously aware of a private pecuniary benefit for himself, his family, or his business, and then must take action in the form of one or more specific steps to attain that benefit.” *Id.*, 610 Pa. at 528, 22 A.3d at 231.

A conflict of interest would not exist to the extent the “de minimis exclusion” and/or the “class/subclass exclusion” set forth within the Ethics Act’s definition of the term “conflict” or “conflict of interest,” 65 Pa.C.S. § 1102, would be applicable.

The de minimis exclusion precludes a finding of conflict of interest as to an action having a de minimis (insignificant) economic impact. Thus, when a matter that would otherwise constitute a conflict of interest under the Ethics Act would have an insignificant economic impact, a conflict would not exist, and Section 1103(a) of the Ethics Act would not be implicated. *See*, Kolb, Order 1322; Schweinsburg, Order 900.

(CONFIDENTIAL – NOT TO BE DISSEMINATED TO THE PUBLIC)

In order for the class/subclass exclusion to apply, two criteria must be met: (1) the affected public official, immediate family member, or business with which the public official or immediate family member is associated must be a member of a class consisting of the general public or a true subclass consisting of more than one member; and (2) the public official, immediate family member, or business with which the public official or immediate family member is associated must be affected “to the same degree” (in no way differently) than the other members of the class/subclass. 65 Pa.C.S. § 1102; *see*, Kablack, Opinion 02-003; Rubenstein, Opinion 01-007. The first criterion of the exclusion is satisfied where the members of the proposed subclass are similarly situated as the result of relevant shared characteristics. The second criterion of the exclusion is satisfied where the individual/business in question and the other members of the class/subclass are reasonably affected to the same degree by the proposed action. Kablack, *supra*.

Conclusion:

In applying the above provisions of the Ethics Act to the instant matter, you are advised as follows:

As the Township Manager, you are a public official/public employee subject to the provisions of the Ethics Act. If you would be hired as an employee of the Regional Commission, with duties that would involve making recommendations on service delivery or funding, you would in that capacity be a public employee subject to the Ethics Act.

Your spouse is a member of your “immediate family” as that term is defined in the Ethics Act. The Longwood Fire Company is not a business with which you are associated because you are not a director, officer, employee, or holder of a financial interest in the Longwood Fire Company. However, the Longwood Fire Company is a business with which your spouse is associated in her capacity as an employee.

In your capacity as the Township Manager—or in the capacity of a Regional Commission employee—you would be restricted from using the authority of your public position for the private financial benefit of yourself, a member of your immediate family such as your spouse, or a business with which you or a member of your immediate family is associated, such as the Longwood Fire Company.

You would have a conflict of interest under Section 1103(a) of the Ethics Act—in your capacity as the Township Manager and/or in the capacity of a Regional Commission employee—with regard to assisting the Regional Commission by performing research and analysis and making recommendations on service delivery, funding, or other matters that may come before the Regional Commission if: (1) you would be consciously aware of a private pecuniary benefit for yourself, your spouse, or the Longwood Fire Company; (2) your action(s) would constitute one or more specific steps to attain that benefit; and (3) neither the de minimis exclusion nor the class/subclass exclusion to the definition of “conflict” or “conflict of interest” as set forth in the Ethics Act, 65 Pa.C.S. § 1102, would be applicable.

(CONFIDENTIAL – NOT TO BE DISSEMINATED TO THE PUBLIC)

In each instance of a conflict of interest, you would be required to abstain fully from participation. The Regional Commission would not be able to waive any conflict of interest which you might have in your capacity as the Township Manager and/or in the capacity of a Regional Commission employee, as the Ethics Act does not provide for waiver where a conflict of interest exists.

The Ethics Act would not prohibit you, in a private capacity as a volunteer and without using Township resources, from assisting the Regional Commission by performing research and analysis and making recommendations on service delivery, funding, or other matters that may come before the Regional Commission.

The propriety of the proposed conduct has only been addressed under the Ethics Act; the applicability of any other statute, code, ordinance, regulation or other code of conduct other than the Ethics Act has not been considered in that they do not involve an interpretation of the Ethics Act. Specifically, this advisory does not address any applicability of the Second Class Township Code or the Pennsylvania Intergovernmental Cooperation Act.


Pursuant to Section 1107(11) of the Ethics Act, an Advice is a complete defense in any enforcement proceeding initiated by the Commission, and evidence of good faith conduct in any other civil or criminal proceeding, provided the requester has disclosed truthfully all the material facts and committed the acts complained of in reliance on the Advice given.

An adapted version of this letter will be made available as a public record.

Finally, if you disagree with this Advice or if you have any reason to challenge same, you may appeal the Advice to the full Commission. A personal appearance before the Commission will be scheduled and a formal Opinion will be issued by the Commission.

Any such appeal must be in writing and must be actually received at the Commission within thirty (30) days of the date of this Advice pursuant to 51 Pa. Code § 13.2(h). The appeal may be received at the Commission by hand delivery, United States mail, delivery service, or by FAX transmission (717-787-0806). Failure to file such an appeal at the Commission within thirty (30) days may result in the dismissal of the appeal.

Respectfully,



Brian D. Jacisin
Chief Counsel

(CONFIDENTIAL – NOT TO BE DISSEMINATED TO THE PUBLIC)