

AO-96-104

Issue:

Whether a prohibited conflict of interest exists where a member of the Planning Advisory Board (PAB) participates in discussions about, and votes on Board of Education (BOE) capital projects, and at the same time serves as legal counsel to members of his own residential community in two legal actions against the BOE over redistricting, when redistricting decisions have a significant effect on proposed capital projects?

Background:

One of the functions of the Planning Advisory Board is to recommend to the County administration a list of the proposed capital projects and capital improvement programs that should be approved for funding in the next fiscal year or within a certain time thereafter..(Charter, S. 533) These proposed projects come from all the agencies of the County government, including the BOE. The BOE's proposed capital projects, which include school construction and renovation, depend on many factors, including current and projected enrollment, the size and condition of existing facilities, changing program needs, and budget constraints, to name a few. Another factor, redistricting, which is the altering of school attendance boundaries, is the issue which gives rise to this request for an opinion.

One of the members of the PAB is an attorney who lives in the community of Seven Oaks(hereinafter "the member"). His community faces the possibility of being redistricted, so that the students in the community would be changed from the Arundel feeder system to the Meade feeder system. To accomplish this redistricting, among other reasons, the BOE has proposed building two new schools, Meade Heights Elementary school and Meade Area Middle School. Students from the Seven Oaks community would be assigned to these new schools.

The member represents, as *pro bono* legal counsel, two clients in complaints they filed against the BOE. One complaint, filed in the Circuit Court for Anne Arundel County, alleges that the BOE violated provisions of the Maryland Open Meetings Act. The other complaint is an appeal to the Maryland State Board of Education from the redistricting of the Seven Oaks community by the local BOE .

In 1995, the PAB held eleven meetings. According to the PAB minutes, the member attended five of the meetings. Three of the meetings that he attended involved BOE issues:

1. In the meeting of March 22, 1995, the member was involved in discussions concerning the proposed Adams Park Elementary School and the proposed Meade Area Middle School. However, the member recused himself from the vote on whether to accept these funding proposals.

2. In the meeting of April 12, 1995, the member again participated in discussions involving the BOE's proposed capital budget, including specifically the Meade Area middle school, and the Annapolis and Arundel feeder systems. Another vote on BOE issues was taken, but the member was not present for, and did not participate in the

vote.

3. In the meeting of June 22, 1995, the member participated in the discussion involving the South Shore Elementary School expansion but recused himself from the vote on the subject.

In 1996, the PAB has held ten meetings to date, six of which the member has attended. During some of these meetings, the member participated in discussions of BOE matters, but there were no occasions in which a vote was taken. Then, in the meeting of February 22, 1996, there was a request by an assistant superintendent for the board of ed. that the member recuse himself from participation in deliberations of BOE projects, because of "his personal and professional involvement in a contentious dispute with the BOE, that dispute directly relating to projects contained in our capital request."

The member responded that he would participate but not vote on any BOE projects, specifically stating that, "...I will follow the same process I followed last year. If there is a question that needs to be addressed with respect to the projects, I intend to raise those questions and expect an answer from you." After that exchange, the PAB proceeded to a discussion of several school issues in which the member participated.

At the meeting of March 5, 1996, the member participated in a discussion of the interim BOE capital budget and voted to accept the BOE class of capital projects, with specific recommendations.

Discussion

A member of the PAB is considered an employee of the County and is therefore subject to the provisions of the local Ethics Law. §1-101(f)(1)(ii). The member apparently relied on Section 3-101, the conflict of interest or "non-participation" provision in determining that recusal would be sufficient to remove the conflict. However, there is another provision in the local ethics law which provides an absolute bar to certain types of outside employment. That provision states:

S. 3-105. Restrictions on outside employment.

. . . (b) An employee may not :

. . . (2) hold any other employment relationship that would impair the impartiality or independent judgment of the employee.

(c) (1) An employee may not be employed by any person or undertake on behalf of any person to assist or represent that person in connection with a matter in which the County has an interest, except in the course of the employee's official duties.

This last provision is clearly applicable, even if the member does not have an "employment relationship" within the meaning of S. 3-105(b)(2). By representing clients in two legal cases in which the county clearly has a legal interest, the employee is violating Sec. 3-105(c)(1) of the county ethics law. This section constitutes an

absolute bar to the outside employment, unlike the non-participatory provision of Sec. 3-101, which only limits participation in particular matters. In the latter case, it would be sufficient for the member to recuse himself from participating in discussions or voting on BOE capital projects. In the former case, the law provides simply that the member **may not** represent the outside client while serving on the PAB.

Conclusion:

The Anne Arundel County Ethics Commission advises that the member should resign from the PAB since his continued representation of clients challenging the procedures and decisions of the school board constitutes a violation of Sec. 3-105 of the county ethics law. Mere recusal from participation in BOE issues does not nullify the absolute prohibition of the law, which is designed to maintain confidence and trust in the conduct of county business. (§1-102). By participating in the decision-making process on both sides of an ongoing controversy, the member of the PAB, despite his best intentions and regardless of his personal integrity, is sending mixed signals about the impartiality and independent judgment of the PAB.