

Anne Arundel County Ethics Commission

Advisory Opinion 97- 164

Issue:

1. Whether a member of the County Council may have an interest in a business entity that is subject to the legislative and budgetary oversight of the County Council and the authority of the Department of Planning and Code Enforcement and the Police Department?
2. Whether an elected official may participate in debate or discussion of legislation that will affect his business interests?

Background:

A council member is the owner of a vehicle towing business that has an exclusive license to tow vehicles in response to county police requests within a certain area. The member has owned and operated this business and has held this exclusive license for over twenty years. He has disclosed this business interest (although not the ownership of the license) in every Financial Disclosure Statement filed since 1994, when his term of office began.

The towing license is issued annually by PACE, with the approval of the county Police Department. The approval is granted after an investigation and inspection of the proposed licensee's towing facility by the Police Department and after the director of PACE confirms that other certain minimum standards are met by the proposed licensee. According to the licensing division of PACE, towing licenses are generally renewed automatically upon request if the Police Department is satisfied with the towing company's performance during the previous year.

The council member who holds the towing license earned \$32,971.00 in towing fees from the county between fiscal year 1992 and fiscal year 1997. He earned considerably more from the private fees that were generated as a result of the license. While the value of a towing license is considerable, there has been little competition for the licenses in the past, although the reasons for this absence of competition are unclear.

The laws concerning towing licenses are found in Article 16 of the County Code. In 1996, the County Council amended the towing license ordinance by abolishing the requirement that towing licensees provide a \$5,000 bond to the county. Instead, the towing companies now provide the county with a certificate of insurance coverage required by the State of Maryland. The change in the law was proposed by the administration at the request of the towing industry.

At the work session held by the County Council on this bill, the council member spoke in its favor and said, "I'm going to have to exclude myself from this vote but wouldn't it be better for the county if they had to include a certificate of insurance?" (rather than "proof of insurance" as provided in the original bill). The council member was insistent that this amendment was necessary despite assurances for the assistant director of PACE that the words, "proof of insurance" would suffice. Eventually, the assistant director agreed to amend the bill as the

council member requested and it was in fact done.

At the public hearing on the bill, comments in favor of the bill's passage were offered by the council member, and testimony was given by a member of the Anne Arundel County Towers Association. This association has nineteen members, including the council member, who joined in 1969.

The council member did not disclose his interest in the towing ordinance until after the public hearing was over and the vote was called. At that time he stated that, "Since one of my part-time occupations is involved with a towing company, I'd like to abstain from this vote."

Discussion

The first issue is whether the Public Ethics Law, §3-105, would prohibit the council member's business interest in the county issued towing license. The law states that an employee (including an elected official), may not have an interest in an entity that is:

1. subject to the authority of the employee or the employee's agency; or
2. negotiating for or currently in a contractual relationship with the employee's agency.

The County Council exercises the legislative powers of the county. It enacts the budget and reviews ordinances pertaining to the licensing of a multitude of county businesses, including towing. However, the day to day authority over the enforcement of the licensing laws resides primarily in the Police Department and in PACE. The County Council does not issue or revoke towing licenses, or issue citations for violations of the licensing laws. It establishes legislative policies for licensing and provides the framework for issuing licenses but there the council's involvement with licensing ceases.

A tower may or may not qualify to get a towing license under the ordinance, but the authority for making that determination rests with the Police Department and PACE. These agencies, and not the County Council, also decide whether the licensee is complying with the terms and conditions of the license. It is the significant authority to grant, revoke and monitor the license and the licensee, not the generalized budgetary and legislative authority exercised by the County Council, which limits outside employment under §3-105(b)(1).

Therefore, the Ethics Commission finds that the council member's interest in a county issued towing license is not an interest in an entity subject to the authority of the County Council. The Commission is aware that the Public Ethics Law is intended to be broadly construed to achieve its purposes. §1-102(c). However, a broader interpretation of the meaning of "authority" in §3-105, would have a severe and unwanted impact on the "citizen legislature" that serves the county. If people must choose between their livelihood and service to the public, few people could afford to choose public service.

The Commission does not need to determine whether the towing license held by the council member constitutes a "contract" within the meaning of §3-105(a) because even if a license can be considered a contract under certain circumstances, it would not be a contract with the County Council *per se*, and so it would not violate the prohibitions of §3-105(b)(1). Therefore, the Commission concludes that county council member's interest in a towing license is not prohibited by §3-105(b)(1) of the Public Ethics Law.

The inquiry does not end with this finding. Section 3-102 of the ethics law is a non-participation section which states:

(a) A personal interest of a member of the County Council conflicts with the public interest if it tends to impair the Councilmember's independence of judgment. The conflict disqualifies the Councilmember from voting on any question or *attempting to influence any legislation* to which it relates.

(b) (2) It shall be presumed that personal interest tends to impair a Councilmember's independence of judgment in any of the following circumstances:

(i) having or acquiring a direct interest, distinct from that of the general public, in an enterprise that would be affected by the Councilmember's vote on proposed legislation; . . . (*emphasis added*).

Although the County Council member did not vote on the bill amending the towing license ordinance, he was its most vocal supporter, both in the work session and in the public hearing. His actions constituted an attempt to influence legislation in which he had a direct interest. The non-participation provision prohibits any and all participation that constitutes an attempt to influence legislation. Abstention from voting is not enough to satisfy the requirements of §3-102(a). It does not matter that the legislation was "good" legislation. It does not matter that the legislation did in fact, benefit the towing licensees by saving them the cost of the \$5000.00 bond. The issue is whether the council member's interest would be affected, in any way, by his participation in towing legislation. The Commission finds that it would, and therefore concludes that the County Council member violated §3-102(a) of the Public Ethics Law by participating in the discussion and recommending an amendment to bill 84-96. Further, the council member did not file a sworn statement with the Ethics Commission describing the circumstances of the apparent conflict and asserting that he would be able to participate fairly in the legislation. By failing to file this statement, the Commission concludes that the council member violated 3-102(c) of the Public Ethics Law.

Conclusion

The Anne Arundel County Ethics Commission concludes that while the county council member is not prohibited from having an interest in a towing license with Anne Arundel County his participation in bill 84-96 was a violation of §3-102 of the Public Ethics Law. The

Commission advises the county council member that he may not participate in any legislation affecting towing licenses in Anne Arundel County, and that participation includes any discussion in a work session or in a public hearing. Although work sessions and public hearings are open to the public, a council member with a direct interest in legislation under discussion would be well-advised to leave the room during this part of the meeting or hearing, to avoid the appearance of attempting to influence legislation.

By: the Anne Arundel County Ethics Commission

Date

(Hand-dated, February 2, 1998 and sent by certified mail on the same day)