

Anne Arundel County Ethics Commission

Advisory Opinion AO-97-191

Issue

Whether an employee can participate in the county department review of a subdivision plan for which his father-in-law is the consulting engineer for the subdivision developer.

Background

The employee who requested this Advisory Opinion is a Development Administrator within the Development Division of the Department of Planning and Code Enforcement. His responsibilities include supervising and managing a "Development Review Team", the team known as "Team East". The employee himself, is designated as the "team leader".

Each team generally consists of a planner, a utilities engineer, a traffic engineer, an environmental planner, and a site review engineer. In the current instance, the employee/team leader is a planner. (In other instances, the team leader might be an architect or engineer). The team provides extensive review of the subdivision plans to insure compliance with all county subdivision requirements. As part of the process, the team communicates frequently with the subdivision developer and the engineering consultant, providing direction and assistance as necessary. Occasionally circumstances require that the original subdivision plans as submitted be modified. Some of these modifications are recommended or required by the county team and some of the modifications are requested by the developer's engineer. In some circumstances, the engineers may request waivers of the regulations in order to proceed with the design as submitted, or to permit modifications to the design. Waivers can be requested by many sources, and for a number of reasons, such as topographic anomalies or road locations.

The subdivision plan in this case was designed for a residential development of about 79 houses. Team East was the county team assigned to review the subdivision plans. The engineering firm that prepared the plans for the developer of this subdivision is a corporation wholly owned and managed by the father-in-law of the county's team leader.

Throughout the subdivision process, the employee, in his capacity as team leader, provided the leadership for his team's ongoing review of the engineer's plans and specifications, with the responsibility to secure compliance with department regulations. He communicated frequently with his father-in-law's firm, sometimes directly, and sometimes indirectly through other team members. On some occasions, these communications concerned requests by the engineering consultant for waivers of the subdivision regulations. One of the team leader's responsibilities included serving as an intermediary between the engineer consultant and the members of the team on various issues. Although the decision to grant the waivers was not made by the employee, it was his responsibility to obtain information relevant to the waiver

requests from the engineering consultant. It was also his responsibility to discuss that information with members of his team and with his supervisors and department director and to make recommendations and give his opinion on whether the waivers should be granted.

Discussion

The Anne Arundel County Public Ethics Law, Article 9, §3-101(a) provides in pertinent part, that:

(a) Unless otherwise permitted by Commission opinion, . . . an employee may not participate in any matter, except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to that matter, if:

(1) the employee knows that any of the following individuals has an interest in the matter:

(iii) a relative of either the employee or the spouse of the employee; . . .

The approval of this residential subdivision plan was certainly a "matter" within the contemplation of this section. The participation in the subdivision process by the development team involved considerable effort, expertise, judgment and discretion on the part of the team's members. Their participation is therefore, not merely administrative or ministerial in nature. On the contrary, it was their extensive review of the subdivision plan, along with the waivers requested by the developer's engineer, that had the most impact on the ultimate resolution of the matter. And, the ultimate responsibility for the team's deliberations, conclusions, and recommendations fall squarely upon the team leader, regardless of his actual input into these deliberations, conclusions, or recommendations.

The father-in-law of the team leader, as the consulting engineer for the developer in the subdivision process, had a clear legal and equitable or financial interest in the matter. Section 1-101(n)(1). The participation by the team leader in this matter, therefore, constituted a clear violation of the non-participation provision of the Public Ethics Law.

It is the possibility of having significant influence in the disposition of a matter that prohibits conduct where relatives have an interest. Where an employee is in the position to have a direct and significant impact on the interests of a relative, it is not up to the public or the Ethics Commission to determine if in fact, the employee's participation served the county's best interests. The Ethics Law prohibits absolutely participation by an employee in certain matters, without consideration for the intentions or motivations of the employee, without regard for the employee's personal integrity or his co-workers' and supervisors' pronouncements that he is a "good guy". The reason for this strict liability is that the Ethics Law is founded on public perception. As the law states, ". . . even the appearance of improper influence. . ." can erode the people's confidence and trust in the impartiality and independent judgment of County officials and employees.

Section 1-102.

In this situation, a private contractor had a family relationship with a county employee who was charged with the duty to review and evaluate the contractor's plans and to recommend that certain actions be taken by the county in response to those plans. The perception that there was improper influence at work is not only likely, it is unavoidable.

Conclusion

The Ethics Commission concludes that the employee's participation as the development team leader in the review of a subdivision plan submitted by the employee's father-in-law, was a violation of §3-101(a)(1)(iii) of the Public Ethics Law. The Commission advises that the employee must refrain from future participation in any county matter in which the employee's father-in-law has an interest. The Ethics Commission reaches no conclusion as to the integrity of the process or the ultimate decisions rendered by the county in this particular subdivision project.

December 29, 1997

by: the Anne Arundel County Ethics Commission