

## Anne Arundel County Ethics Commission

### Advisory Opinion AO-97-42

#### Issue

Whether a legislator may vote on controversial zoning legislation that affects a community where the legislator is building a house for resale, as part of his business?

#### Background

A member of the County Council is building a house for resale in a certain community. This project is part of his regular business. In the neighborhood of this community is a wood waste recycling facility that is operating without the appropriate zoning. Legislation has been introduced in the County Council that would permit wood waste recycling as a special exception at this location, thereby allowing this facility to stay in operation. The members of the community in which the Councilmember's property is located may oppose passage of this legislation.

#### Discussion

The Anne Arundel County Ethics Law, Article 9, § 3-102 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; . . .<sup>1</sup>

The first issue is whether the Councilmember has an interest in an enterprise that would be affected by his vote on the wood recycling facility. Interest is a legal or equitable interest, whether or not subject to an encumbrance. §1-101(n)(1). His "interest" is in the building of a home for sale, which is an enterprise.

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<sup>1</sup> There are other presumptions of a conflict of interest, not pertinent here, for disqualification of a Councilmember from voting on legislation.

The question then becomes, whether the business enterprise, "would be affected" by his vote on the legislation. There may be evidence offered that the operation of the wood waste recycling facility adversely affects the air, the noise, and the traffic, and that as a result, property values in the community may suffer by its continued operation. In that case, the Councilmember's personal interest would be affected by his vote on legislation permitting the continued operation of the wood recycling facility.

In *Montgomery County Board of Appeals v. Walker*, 228 Md. 574 (1962), the Court upheld the decision of a member of the Board of Appeals who had recused himself from participating in a certain matter. Although his recusal resulted in a split decision of the Board, the Court supported the recusal, and quoting from an earlier Connecticut case said,

It is the policy of the law to keep the official so far from temptation as to ensure his unselfish devotion to the public interest. . . . The modification of zoning regulations . . . whether it be denominated legislative or quasi-judicial, should command the highest public confidence, since zoning restrictions limit a person's free use of his real estate in the interest of the general public good. Anything which tends to weaken public confidence and to undermine the sense of security of individual rights which a citizen is entitled to feel is against public policy. *Id.* at 580-581, citing, *Mills v. Town Plan and Zoning Commission*, 144 Conn. 493, 134 A.2d 250 (1957).

The personal interest of the Councilmember, creates at the very least, a presumption that his independent judgment would be impaired. The Ethics Law is designed to prevent even an appearance of impropriety in the conduct of county officials and employees.

## **Conclusion**

The Ethics Commission concludes that the Councilmember has a personal interest that conflicts with the public interest in the zoning legislation, Bill 22-97. The Commission further concludes that this conflict requires his disqualification from voting or attempting to influence the vote on the legislation. The Councilmember may choose to follow the exception from this requirement set forth in §3-102(c), which permits the legislator to vote on legislation as long as he discloses fully and in writing, all pertinent facts, and additionally states that he can vote "fairly, objectively, and in the public interest." The Commission does not encourage this alternative because it will not alleviate the appearance of the conflict of interest.

March 26, 1997

The Anne Arundel County Ethics Commission

William J. Howard, Chairperson