

## Anne Arundel County Ethics Commission

### Advisory Opinion

98 - 105

#### Issue:

Whether and to what extent, a member of the county council may participate in matters involving the Anne Arundel County Fire Department, when the spouse of the council member is employed by the department as a firefighter.

#### Background:

The spouse of a candidate for the county council is a career firefighter with the county and a member of the firefighters' union. The candidate asks whether this relationship would prevent a council member from participating in matters dealing with the fire department, the firefighters union, or the fire-PAC, if the candidate is elected. The spouse is not a member of the fire PAC, an independent organization that members of the firefighters' union must pay to join. Although the question is speculative at this point, the candidate has expressed concern about seeking the current endorsement of the firefighter's PAC if the candidate cannot provide legislative support to the firefighters in future county business. While the ethics commission has no jurisdiction over the conduct of candidates for county elective office (except for requiring the filing of financial disclosure statements), the members of the commission believe that giving advice about prospective conduct, even if speculative, is the primary purpose of rendering advisory opinions.

#### Discussion

Two sections of the Public Ethics Law are pertinent to this inquiry. Section 3-101(a)(1)(ii) prohibits an employee (including a member of the county council) from participating in any non-ministerial matter, if the employee's spouse has an interest in the matter. Sections 3-102(a) and (b)(iv), pertaining specifically to council members, prohibit a council member from voting on or attempting to influence any legislation in which they have a "personal interest". A personal interest is presumed to impair a council member's independent judgment where a spouse has an employment relationship with any entity involved as a party to the matter to which the legislation relates.

An "interest" is defined in §1-101(n) as ". . . any legal or equitable economic interest". An employment relationship is both a legal and economic interest. Therefore, §3-101 would apply to prohibit a council member's participation in any matter involving the spouse's employment, and §3-102(a) would prohibit the council member from participating in any legislation involving the spouse's employer.

The meaning of "participation" has been broadly construed by the state and county ethics commissions and the joint committee on legislative ethics, to include giving advice or

recommendations, providing information or supervision, making evaluations, participating in discussions, or any other type of involvement that may have an impact on the disposition or decision in a matter. See for example, State Ethics Commission opinions 90-2, 86-20, and 80-17, COMAR, Title 19A. Also, Anne Arundel County Ethics Commission opinions 97-36, 97-191, and Joint Committee on Legislative Ethics, Opinion 15.

The county council is extensively involved with the fire department and with the firefighters' union. The council considers, debates and can reduce the fire department's proposed budget. The council hears and decides issues that have created an impasse in the contract negotiations between the firefighter's union and the county administration. The council votes on personnel issues affecting the fire department, including salaries, wages, pension and other benefits of non-represented fire department employees. In all of these matters, a firefighter and member of the firefighter's union has an immediate or prospective legal or economic interest.

Participation as a council member, in any matters involving the fire department by the spouse of the firefighter, will create at least an appearance of a conflict of interest. A vote that benefits the firefighters, or even vocal support during discussions of fire department issues will be suspect. The assurance of impartiality of its legislators is the stock in trade of honest government. It is also the goal of the Public Ethics Law, §1-102(a)(1): ". . . the people have a right to be assured that the impartiality and independent judgment of County officials and employees will be maintained."

**Conclusion:**

The ethics commission concludes that a council member whose spouse is a career firefighter and union member, cannot participate in any way in matters involving the fire department's budget, personnel, duties and responsibilities, or other issues. The council member cannot participate in matters involving firefighters' union issues. This prohibition would include not only public debate and voting, but also private discussions with other council members or members of the administration. However, as it has previously concluded in other opinions, this prohibition would not prevent the council member from voting to approve the general county budget. The council member should also note the applicability of the provisions of §3-107, barring the disclosure of confidential information for the economic benefit of another, and §3-104, prohibiting the use of the prestige of office for the benefit of another.

Date:

By: the Anne Arundel County Ethics Commission