

## **Anne Arundel County Ethics Commission**

### **Advisory Opinion AO-98-39**

#### **Issue:**

Whether a county council member who serves on the North Arundel Hospital Foundation Board may participate in the county council's consideration of a grant to the Foundation that may be submitted to the council as part of the County Executive's budget.

Whether the county council member may vote on the county budget if a grant to the hospital foundation is included as an item in the budget.

#### **Background:**

One of the members of the Anne Arundel County Council is a volunteer member of the North Arundel Hospital Foundation Board. The foundation is an incorporated wholly-owned subsidiary of the North Arundel Health System. Its exclusive purpose is to support North Arundel Hospital, also a subsidiary of the Health System. As the hospital's fund raising organization, the foundation is the anticipated recipient of a county grant to be used for the hospital's emergency room project. The grant will be submitted for consideration to the county council as part of the county executive's proposed budget and after the appropriate public hearings, the council will vote to adopt the budget. The council has the authority to decrease or delete items from the budget, but may not add or increase items.

#### **Discussion:**

The issues raised in this inquiry involve §3-101(the non-participation provision) and §3-102(official acts of members of the county council) of the Public Ethics Law. The Ethics Commission had previously determined that a council member could serve on a foundation board without violating the prohibitions on outside employment outlined in §3-105. See AO- 96-111. This decision was based on the notion that the foundation involved was a fundraising organization for the community college which is also supported by the county. The foundation itself, was not subject to regulation by the county and had no existing contracts with the county. Therefore, there were no competing or conflicting interests involved in the council member's participation on the college foundation. However, the commission recognized that there could be specific instances where the council member could be required to recuse himself from participating in legislative or other county matters in order to avoid a conflict of interest between his county duties and the foundation's interests.

Section 3-101(a)(2) prohibits an employee (including a county council member) from participating in any matter if the employee is a trustee of a business entity that is a party to the matter. The foundation is a business entity as defined by §1-101(b). As the proposed recipient of the grant, the foundation would be a party to the matter. Therefore, this provision prohibits the county council member from participating in any review, discussion, debate or other

legislative action involving the particular grant item.<sup>1</sup> Recusal would also avoid any problems that may arise among competing health care providers for the same grant, if that becomes an issue.

Although the council member may not participate as a council member in any matter involving the particular grant item, it would be quite a leap to suggest that the member may not therefore, vote on the county budget. The grant item represents a negligible percentage of the overall county budget. As long as the member does not participate in any process involving the grant, the council's decision to keep or delete the grant from the budget will not be tainted by the private interests of the non-participating member.

Under §3-101(b), the ethics commission may determine that an employee may participate in a matter if that participation will not result in a conflict between the private interests of the employee and the employee's duty to the county. In the instant case, the commission believes that the council member may vote on the budget without creating such a conflict. The fiduciary obligation owed to the foundation by the council member is not the type of interest that conflicts with the county's interests in the passage of the budget. The council member will not benefit financially from the grant, and although the foundation and hospital will benefit directly from the grant, the county citizens will be the ultimate beneficiary.

**Conclusion:**

The county council member who serves on the hospital foundation board may not participate in any matters specifically involving a proposed grant to either the foundation or the hospital. If the member does not influence or attempt to influence the council's decision to support, decrease or delete the grant, the member may vote on the county budget without violating the Public Ethics Law.

Date: \_\_\_\_\_

By: the Anne Arundel County Ethics Commission

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<sup>1</sup> Section 3-102(b)(2)(iv) also prohibits participation in legislation where the council member's vote would affect an entity of which is a trustee.