

May 5, 1998
Re: IO - 98 - 50

You inquired whether you could vote on the county budget since it may include a grant to the Maryland Hall for the Creative Arts, an organization of which you are a member of the board of directors. As you are aware, the ethics commission recently issued AO-98-39, stating that a county council member could not participate in any matter involving a grant to the North Arundel Hospital Foundation since the member served on the foundation's board of trustees.

You suggested that since you serve on the board in an *ex officio* capacity, your participation would present a different situation from the subject of AO -98 -39. It is true that the county council is authorized to appoint a member of the board, but there is no requirement that the appointment come from the ranks of the county council. See, By-Laws of Maryland Hall for the Creative Arts, Inc., Article IV, Section 2(A)(iii). Therefore, you are not serving on the board in your capacity as a county council member. However, the capacity in which you serve on the board is not the real issue in this situation. The Anne Arundel County Ethics Commission has previously concluded that with some limitations, an employee who is covered by the ethics law may serve in a non-compensated position with the board of directors on certain types of private entities. See, Opinions 96-109, 96-111.¹

The limitation most relevant to your inquiry is the rule that an employee may not use the prestige, title, or authority of the employee's office or position for the employee's private gain or the gain of another. §3-104. If you were to advocate the inclusion of grant monies to Maryland Hall in the county budget, you would essentially be lobbying for Maryland Hall, choosing this organization over any competing organizations, because of your position on the board. Your legislative support for Maryland Hall would constitute the use of the authority of your position for the financial gain of another.

An exception to §3-104 permits the use of the authority of your position if you do so as part of the "usual and customary constituent services by an elected official." However, the ethics commission does not consider service on the board of a private entity to be a "usual constituent service". If it were, would you be obligating yourself to serve on the board of any organization that chooses to include a member of the county council on its board of directors?

Section 3-101(a)(2)(iii) prohibits your participation in any matter in which a ". . . business entity of which the employee is an officer, director, trustee, partner, or employee . . ." is a party. See also §3-102(b)(2)(iv). Your participation in any matter involving a grant of county funds to Maryland Hall would therefore violate this provision as well as §3-104 of the Public

¹ The State Ethics Commission is stricter than the county ethics commission. The state allows non-compensated service on the board of directors of private entities only if the service is in an employee's official capacity. Even so, the employee may not directly participate in the fund raising activities of the entity, provide the entity with information not generally available to the public, or allow such entity to receive favored treatment.

Ethics Law.

Finally, it does not matter that funding for Maryland Hall may be in the best interests of county residents. The fact is that you cannot vote to decrease or delete a grant to Maryland Hall and expect to keep your position on its board of directors. Your obligation to serve the best interests of Maryland Hall, Inc. would unequivocally require you to support this funding. Clearly, the appearance of partiality and conflict of interest is unavoidable.

For these reasons, the conclusion set out in AO-98-39 applies equally to your situation. You may not participate in any funding matter involving Maryland Hall, but because this funding presents a negligible part of the overall county budget, you may vote on the budget without violating the ethics law.

If you have any other questions, give me a call anytime.

Sincerely,

Betsy K. Dawson