

Anne Arundel County Ethics Commission

Advisory Opinion

99-17

Issues:

1. Whether a member of the Planning Advisory Board may continue to serve on a small area planning committee.
2. Whether, if the Planning Advisory Board member resigns from the small area planning committee, the member may participate in appeals from that committee to the PAB?

Background:

A recently appointed member of the Planning Advisory Board has been serving on one of the existing small area committees. The purpose of this small area committee, made up of members appointed by the county executive, is to study the general development plans and render advice and recommendations concerning the implementation of that plan in the designated area. The procedure that is envisioned for the completion of this project is that each small area committee will present its recommendations to the Department of Planning and Code Enforcement. PACE may accept the committee's recommendations in whole, in part, or not at all when preparing the final planning document. This document, along with proposed land use and zoning maps will be presented to the Planning Advisory Board for its consideration. The PAB will hold public hearings to permit additional public input. At this time, the small area committees will be permitted to present their positions to the PAB, and to appeal for reconsideration by the PAB of any recommendations that were not adopted by PACE in its final document. After the completion of the public hearings, the PAB will present its recommendations to the county executive for consideration in proposed zoning legislation.

Discussion:

Members of the Planning Advisory Board are considered employees of the county for purposes of the Public Ethics Law. §1-101(f)(1)(ii). As employees, they are subject to the conflict of interest provisions of that law, specifically §3-105(secondary employment) and 3-101(non-participation). The first of these provisions prohibits a PAB member from:

1. being employed by or having an interest in an entity subject to the authority of the PAB;
2. holding any other employment relationship that would impair the impartiality or independent judgment of the PAB member;

3. being employed by any person or undertaking on behalf of any person to assist or represent that person in connection with a matter in which the County has an interest, except in the course of the employee's official duties.

The duties of a member of a small area committee are to assist that entity¹, in the consideration and recommendation of matters in which the county is very much involved. And while these committees are a creation of the county government and are fulfilling a goal established by the county government, the interests of the small area planning committees and the county may ultimately become adversarial and contentious. Because of potentially conflicting interests between the county administration and the small area committees, the ethics commission advises that continued membership on a small area committee by a PAB member would be prohibited secondary employment under §3-105(c)(1).

The more general provision of §3-105(b)(2), applies to this situation as well. Membership on an ad hoc county committee is not employment in the traditional use of the word. However, the Public Ethics Law is to be liberally construed to effectuate its purposes. §1-201(c). For this reason, the ethics commission considers the nature of the relationship between the person and the secondary activity in determining whether an employment relationship exists. When the duty of loyalty to the outside activity creates a potential for conflict with county interests, that duty creates an employment relationship, regardless of whether compensation is paid. In this case, the duty of loyalty to the goals of the small area committee creates an employment relationship among its members. And clearly, this employment relationship will impair, or at least *appear to impair*, the impartiality of the PAB member who must weigh potentially conflicting recommendations of PACE and the small area planning committees.

The ethics commission advises that the PAB member cannot serve two potentially competing masters. For this reason, the employee must choose to continue service with one or the other organization.

If the employee resigns from membership on the small area committee, the question arises under §3-101, as to whether the PAB member can participate in any matter in which that small area committee is involved. Section 3-101(a) prohibits a PAB member from participating in any matter in which that member has an interest. Members of small area committees are appointed by the county executive and charged with certain duties and obligations to the citizens of the county. This appointment with its attendant responsibilities, creates a legal "interest" in its members. Once the member resigns, there is no longer an "interest". The non-participation requirement applies only to currently existing interests, and therefore, is not applicable after the

¹ The definition of "person" includes "entity". Anne Arundel County Code, Article 1, §1-101(h).

member resigns.

However, the legislative policy embodied in the ethics law provides that the confidence and trust of the public in its government ". . . is eroded when the conduct of the County's business is subject to improper influence or even the appearance of improper influence." §1-102(a)(2). The ethics commission believes that participation by the PAB member in matters of "former" interest would create the appearance of improper influence. For that reason, the ethics commission recommends that the PAB member refrain from participating in any public hearing in which specific matters of concern to that small area planning committee are involved. This conclusion does not mean that the PAB should not be involved in other aspects of the public hearings on the planning documents.

This opinion does not address the applicability of either the PAB's Rules of Procedure, Article VI, §2, or the "Proposed Guidelines for Testimony given by Board Members on Behalf of their communities or as Individuals" to this inquiry.

CONCLUSION:

The ethics commission advises that a member of the PAB cannot continue to serve on a small area planning committee. Even if the member resigns from the committee, the commission recommends that the member refrain from participating in any matter involving that small area committee, although the member can participate in other aspects of the public hearings on the planning documents submitted for its review. Although the law, §3-101, does not technically require the PAB member to abstain from this matter, the ethics commission believes that continued participation in matters of interest to that small area committee the member previously represented would create an appearance of impropriety.

Date: _____

By: the Anne Arundel County Ethics Commission