

Anne Arundel County Ethics Commission

Advisory Opinion

99-2

Issue:

Whether a member of the county council may participate in the consideration and vote on legislation directly affecting the current county council's rights to participate in the county Employees' Retirement Plan, where no other employee except the County Executive will be so affected.

Background:

Two bills pending before the county council affect the rights of the current members of the council to participate in the Employees' Retirement Plan. Both bills would repeal the requirement that county council members participate in the pension plan and would in fact prohibit the council members' participation in the plan. (The second of the two bills would also require the council members to pay a premium to participate in any health or insurance program.) The proposed legislation also removes the county executive from the county retirement plan and for the one incumbent member of the county council, the proposed legislation makes participation in the retirement plan optional. There are no other county employees affected by these bills.

Two of the current council members are at or close to an age when under the law as it currently stands, they may opt out of participating in the retirement plan. One member, because of previous county employment, may be eligible to buy back several years of prior service for additional pension credit upon retirement under the current law. In one way or another, however, all the members of the county council will be potentially affected by the enactment of either bill.

Discussion:

The Public Ethics Law, §3-101 prohibits an employee from participating in any matter in which the employee has an interest. An interest is defined, in §1-101(n) as ". . .any legal or equitable economic interest." Section 4-104(j) requires employees filing financial disclosure statements to list all sources of compensation in the disclosure form. The ethics commission has always interpreted this provision to include payments received from a pension plan.

The requirement that an employee participate in a pension plan creates certain rights and obligations that constitute both a legal and equitable interest in that retirement plan. For purposes of the ethics law therefore, county council members have an interest in the proposed legislation that is subject to the prohibition against participation set forth in §3-101 of the ethics law.

On the other hand, it would be hard to imagine a local government where elected officials do not occasionally experience the effects of the laws they enact. They establish and vote on zoning policy, budgets, school issues, and numerous other issues that affect them and their families personally. Their residency in the county, by itself, does not create the kind of interest in a matter that requires disqualification from participation under §3-101(a). On other occasions, the county council considers legislation that will affect them as well as all other county employees. To borrow an old cheerleader's cliché, "if they can't do it, no one can". For this reason, §3-101(c) was created, expressly granting authority for an employee or official to act on a given matter, even if the employee has an interest in the matter, if the disqualification would leave a body with less than a quorum capable of acting on the matter. The only requirement is that the employee or official disclose the nature of the potential or actual conflict. In the case of the bills currently under discussion, the apparent conflict is a matter of public record. And while it is true that enacting the same legislation with only prospective application, the issue of prohibited interest could be avoided, it is not for the ethics commission to establish or second guess legislative policy.

Conclusion:

There is no doubt that every member of the county council has an interest in and will be potentially affected by the two pension bills currently under consideration. This interest is different from the public generally, or from the other employees of the county government. Section §3-101 prohibits employees from participating in matters in which they have an interest; however, the exception to this rule, found in §3-101(c), is applicable in this instance. Therefore, the members of the county council may consider and vote on this legislation.

Date:

By: the Anne Arundel County Ethics Commission