

Anne Arundel County Ethics Commission

Advisory Opinion

99-27

Issues:

1. Whether a member of the county council may continue to participate in legislative activity on a proposed bill where that member is an accountant whose clients include a lobbyist employed to influence the outcome of that legislation.

2. Whether, if the member cannot continue to participate in the legislative activity, that member also withdraw from the sponsorship of the bill.

Background:

One of the members of the county council co-sponsored a bill that will eliminate motor sports racing complexes as a conditional use in W3 districts and will permit them as a special exception in those districts under certain circumstances. It is a controversial bill that has drawn significant public interest on both sides of the issues involved.

The council member owns and is employed by, a certified public accounting firm. One of the clients for whom this member prepares annual tax returns is registered as a lobbyist for the motor sports racetrack developer who is the primary focus of this legislation.

Discussion:

The provisions of the Public Ethics Law that apply to these issues are §§3-102(a), 3-102(b)(1), and 3-102(b)(2)(ii). Those provisions state in pertinent part, that:

(a) A personal interest of a member of the County Council conflicts with the public interest if it tends to impair the Councilmember's independence of judgment. The conflict disqualifies the Councilmember from voting on any question or attempting to influence any legislation to which it relates.

(b) (1) In this subsection, "close economic association" means:

(i) a Councilmember's employer, employees, and partners in business or professional enterprises; . . .

(2) It shall be presumed that personal interest tends to impair a Councilmember's independence of judgment in any of the following circumstances: . . .

(ii) benefiting financially from a close economic association with a person whom the Councilmember

knows, or from the facts is presumed to know, has a direct interest in an enterprise or interest that would be affected by the Councilmember's vote on proposed legislation, differently from other like enterprises or interests, or benefiting financially from a close economic association with a person who is lobbying or who has employed a lobbyist to propose legislation or to influence one or more Councilmembers' votes; . . .

The definition of "employer" under §1-101(g), includes any person who pays compensation to another for services rendered. The lobbyist for the racetrack developer pays compensation to the councilmember to prepare the lobbyist's annual tax return. Therefore, the councilmember is employed by, and has a close economic association with the lobbyist, according to §3-102(b)(1)(i).

The councilmember benefits financially from this close economic association. The ethics law creates a presumption that this interest tends to impair the councilmember's judgment if the person with whom the councilmember has a close economic association, has a direct interest in an enterprise that would be affected by the councilmember's vote on legislation. As a lobbyist for an enterprise that would be directly affected by the councilmember's vote on this legislation, the lobbyist has an "interest" within the meaning of this subsection. Therefore, this subsection applies in the present case.

The same section creates a presumption that a close economic association tends to impair the impartial judgment of a councilmember if the close economic association is with a lobbyist attempting to influence the councilmember's vote. This presumption certainly applies to the instant case.

A presumption that a personal interest tends to impair independence of judgment can be overcome if the councilmember can prove to the ethics commission that this close economic association with the racetrack developer's lobbyist will not tend to impair the councilmember's judgment. However, the facts presented to date, could lead a reasonable person to conclude that a council member would vote to benefit the private client's interests in order to maintain the business relationship, and perhaps to attract additional clients with legislative agendas. This possible conclusion demonstrates that there is also an appearance of impropriety created by the councilmember's participation in this legislative activity.

Section 3-104(a) may also apply to the present situation, since an argument could be made that the councilmember's vote on this legislation might provide a benefit to the member, in the continued good will of a client. It is not necessary to address this issue, since the prohibitions of §3-102 are dispositive on these issues.

Conclusion:

Sections 3-102(a) and (b) prohibit the councilmember from participating in any legislative activity involving Bill 115-98, since the councilmember's client has an interest that would be affected by the councilmember's vote and since the councilmember's client is also lobbying to influence the outcome of the legislation. In addition, the councilmember should withdraw as a co-sponsor of the bill in order to avoid any attempt to influence its passage by lending the member's name to its list of sponsors.

This conclusion is not meant to impugn the integrity or motives of any individual. Section 3-102 is a strict liability provision, meaning that the ethics commission need not examine any legislator's motives, or determine whether a particular vote on particular legislation would be in the county's best interest. The law states unequivocally that a councilmember may not vote or attempt to influence any legislation in which the member has a personal interest. For this reason, the councilmember may not vote on the legislation, even if the member asserts that the vote would be "against" that personal interest. It is not for the ethics commission to prove the truth of that assertion, and in fact, the ethics commission would probably conclude that a vote allegedly against interest is not impartial and would also violate the ethics law.

Date: _____

By: the Anne Arundel County Ethics Commission