

March 5, 1999
Re: IO-99-36

You inquired about ethical guidelines for participating in zoning legislation that may affect commercial property you own on Route 450 in Anne Arundel County. To my knowledge, the only types of zoning legislation to which you may be referring, would be the comprehensive rezoning bill, or text amendments to current zoning laws.

According to §3-102, a council member cannot participate in legislative activity if the member has a "personal interest" in the legislation that "tends to impair the Councilmember's independence of judgment. The law creates a *presumption* of impairment in the following circumstances:

1. the member has a direct interest, distinct from that of the general public, in an enterprise that *would be affected* by the member's vote on proposed legislation;
2. the member benefits financially from a partnership with a person who has a direct interest in an enterprise or interest that *would be affected* by the member's vote on proposed legislation, *differently from other like enterprises or interests*; or,
3. the member or the member's spouse has an interest that *would be affected* by the member's vote on proposed legislation.¹

To determine whether the above referenced subsections of §3-102 would apply in a given instance, the ethics commission looks at the facts and circumstances of the interest involved and the specific legislation to decide whether the council member's interest *would be affected*, and *how it would be affected*. In the past, the commission has considered the effect that legislation might have on the financial or fair market value of a council member's property interest. See AO-97-42. In that case, the specific property was being developed for resale by the council member and was in a neighborhood that was likely to be specifically impacted by the outcome of the legislation. The commission also advised that a council member could not participate in any legislative activity that would impact his business enterprise in the same way as other similar business enterprises, regardless of whether the impact would be favorable or unfavorable. See AO-97-164.

With zoning legislation specifically, the commission would probably consider the following factors: the effect that zoning changes would have on the council member's property values, both current, and future, the possibility that zoning changes in the area of the council member's interest might constitute a change in the neighborhood of the member's property that could lead to zoning changes to the member's property, the likelihood that zoning changes would affect the value of the business enterprise located on the property, and other factors that would affect the council member's property or business interests.

¹ Obviously, some legislation affects the interests of members of the county council in the same ways it affects all county citizens, or large segments of the public. It is not generally required that a council member abstain from participation in legislative activity that affects the member's interests to the same extent and in the same manner as it affects the interests of the public.

The commission would also weigh the appearance, or public perception, of a conflict that would be created by the council member's participation in legislation. This consideration is directed by the legislative policy of the ethics law, which includes avoidance of even the "appearance of improper influence." §3-102(a)(2). Toward this end, the Maryland Court has said that,

It is the policy of the law to keep the official so far from temptation as to ensure his unselfish devotion to the public interest. . . . The modification of zoning regulations. . . whether it be denominated legislative or quasi-judicial, should command the highest public confidence, since zoning restrictions limit a person's free use of his real estate in the interest of the general public good. Anything which tends to weaken public confidence and to undermine the sense of security of individual rights which a citizen is entitled to feel is against public policy.
Montgomery County Board of Appeals v. Walker, 228 Md. 574, 580-581(1962), citing Mills v. Town Plan and Zoning Commission, 134 A.2d 250 (Conn. 1957).

Because the applicability of §3-102 depends on several factors, it would be premature for the commission to evaluate the types of zoning legislation, if any, that would require your recusal. The commission would welcome a request for further guidance when a specific piece of legislation is going to be introduced that may affect your property interests.

Thank you for your inquiry. I apologize for my delay in responding to you.

Sincerely,

Betsy K. Dawson
Executive Director