

Anne Arundel County Ethics Commission

Advisory Opinion 00-167

Issue:

Whether, and to what extent, a county council member may participate in that portion of the Crofton Small Area Plan legislation proposing changes to a specific area where the council member and the member's spouse own real property.

Background:

The facts underlying this issue are set forth in AO-99-87, when this matter was first considered by the ethics commission.¹ At the time the opinion was issued, the Crofton small area committee had not finished its work and there were no proposed changes to the general development plan that the commission could consider. Since that time, the Crofton Small Area Plan has been completed, and the council will very shortly review and approve or disapprove those recommendations.

The proposed zoning changes to the area known locally as Staples Corner, involve three separate but adjoining areas. (See attachment #1).

1. The area designated as "A" includes the property owned by the council member on Defense Highway, west of the intersection of Davidsonville Road and Defense Highway. It is currently zoned rural residential, although a few small businesses, including the business of the council member's spouse are in operation in this area.

2. The second area, "B" encompasses the intersection. While most of the area is zoned rural to low-medium residential, about one-fifth of the area is zoned commercial. The uses in this area are mostly commercial. This area abuts the eastern boundary of area A.

3. Area "C" includes the property on Davidsonville Road, south of the intersection. Area C is currently designated as rural residential. Area C does not abut Area A.

¹ That opinion said: "A member of the county council is the joint owner of a parcel of property located in the member's councilmanic district. This property is zoned RA (Agricultural Residential), but is used by the member's spouse for the operation of a professional clinic under the terms of a special exception granted in 1993. Prior to that time, the residential dwelling located on the property had been used by the spouse for a professional office; the special exception permitted the expansion of the practice to include an associate. By its own terms, the special exception will automatically expire when the spouse ceases to operate the professional clinic or upon transfer of the ownership of the property."

The council member has acknowledged that participation in any legislative activity involving Area A would be inappropriate, since the council member's property interest "would be affected by the council member's vote. . .". §3-102(b)(2)(ii) and §3-102(b)(2)(iv). The council member has also stated publicly that the member can participate and vote on legislation concerning areas B and C fairly, objectively, and in the public interest.

Discussion:

In previous opinions and letters, the ethics commission has advised the council member not to participate in any zoning legislation that would affect the real property interests of that member. In attempting to define the area where zoning legislation would affect that interest, the commission used words like "neighborhood", "adjacent or nearby properties", "property in close proximity", "adjacent or in close proximity". AO-099-87, IO-00-21. These words were used to explain a general idea, and did not refer to specific locations or areas.

Now that three specific areas have been designated, the ethics commission has been able to consider whether the proposed changes to these areas "would affect" the member's interest, requiring the member's recusal. The commission has, like the council member, concluded that zoning changes to area A will affect the council member's interest. The commission also recognizes the possibility that legislative action on areas B or C might have some residual effect on the member's property interest. However, that possibility is neither sufficiently direct nor reasonably calculable so as to refute the member's assertion that the member can participate as to areas B and C with fairness, impartiality, and in the public interest.

Conclusion:

Where legislation *may affect* a council member's interest, but it is by no means certain that it *would affect* that interest, the law permits for deference to be accorded to the council member's judgment, after full disclosure.² This distinction is the difference between an *apparent* conflict of interest and an *actual* conflict of interest. Assuming that full disclosure of the relevant facts has been made, the ethics commission concurs in the member's determination that the member may vote as to areas B and C fairly, objectively, and in the public interest.

Date: November 6, 2000

By: the Anne Arundel County Ethics Commission

² Under §3-102(c), a council member is required to file a sworn statement describing the circumstances of an apparent conflict and stating that the member is able to vote and otherwise to participate in legislative action involving the apparent conflict fairly, objectively, and in the public interest. The member did not file the sworn statement required, but the commission will accept the council member's verbal assurances in lieu of the sworn statement in this instance.