

Anne Arundel County Ethics Commission
Advisory Opinion
00-18

Issue:

Whether, and to what extent a member of the county council may participate, in an official capacity, in matters involving a special community benefit district where the member is an "owner", and subject to the provisions of that benefit district.

Background:

The Anne Arundel County Code, Article 6, §2-101 *et seq.*, provides for the creation and regulation of special community benefit districts ("SCBD"). An SCBD is created by the county council upon the petition of a majority of property owners in the proposed district. The purposes for which the districts are created vary from district to district, but generally provide for a range of services from special police protection, to insect and pest control, to maintaining community property, and other types of services. Funds to pay for these services come from a special tax that is assessed and levied on the property owners in the SCBD by the county council in response to the district's budget request. The district administration, usually the community association, receives the money from the county, and spends it according to specified procedures for its specified purposes. There are approximately 50 special community benefit districts in Anne Arundel County.

On occasion, issues between the various SCBDs and the county have arisen with regard to the purposes for which these tax funds can be spent. In the present case, the district proposed to use special tax funds to pay attorneys' fees in a lawsuit to which the community association had joined as a party. The lawsuit involved the proposed development of land that allegedly would adversely affect private property in the district. The county responded by letter to the SCBD, taking the position that the district could not use tax funds for that purpose. A copy of the letter was sent to the council member from that district. That same council member resides and is a property owner in the district. The council member has requested advice as to whether intervention by the member on behalf of this SCBD would violate any provisions of the ethics law.

Discussion:

Three sections of the Public Ethics Law apply to this inquiry. The first one, §3-101(a)(1)(i) prohibits an employee from participating in ". . . any matter, except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to that matter . . .", if the employee has an interest in that matter. An "interest" is broadly defined in the ethics law to include "any legal, or equitable economic interest." §1-101(n)(1). As a property owner required to pay taxes for use by the SCBD in which the member lives, the council member has both a legal and equitable economic interest in matters that affect the SCBD. Legal fees that may be paid by the special tax come out of the member's pocket. If the member communicates with other county employees or officials in an attempt to resolve a

dispute between the SCBD and the county, that member will be participating in a matter in which the member has an interest. Section 3-101(a)(1) applies to bar this participation.

Section 3-102(a) provides that a member of the county council is disqualified from voting or attempting to influence any legislation involving a matter in which the council member has a "personal interest", if that interest tends to impair the council member's independence of judgment. Subsequent sections of §3-102 set forth "presumptions" of impairment. In §3-102(b)(2)(i), a presumption of impairment is created where the council member has a ". . . direct interest, *distinct from that of the general public*, in an enterprise¹ that would be affected by the Councilmember's vote on proposed legislation." In this case, the council member has an direct legal and equitable interest in the budget and tax levy imposed on the SCBD, and in the uses to which district taxes are put. This type of interest is not comparable to the interests that a council member shares with the general public, e.g. the property tax rate, the school board budget, and other legislative matters that will affect a council member along with all other county citizens. The interest in a SCBD is distinct from the interests of the general public. For this reason, the council member cannot vote on any budget or other matters involving the SCBD, unless the presumption of a conflict can be effectively rebutted by that member.

Finally, §3-104(a) prohibits an employee, including an elected official, from using the prestige of the office for personal gain, or for the gain of another. Section 3-104(b) exempts from this prohibition those activities that can be considered "constituent service". While advocacy on behalf of an SCBD may be considered constituent service where an elected official has no interest, it cannot be so considered in a case where the official may be personally affected by the county's ultimate position on the appropriate uses of SCBD funds.

Conclusion:

Both sections 3-101 and 3-102 prohibit a council member from participating in any discretionary matters that would affect a SCBD in which the council member is a property owner subject to special taxation. Even if the council member could rebut the presumption of impairment that is created in this situation, and could show that the participation would not result in an actual conflict of interest between the member's personal interest and official responsibilities, §3-104(a) would prohibit the member from using the office for the member's financial gain or for the gain of the community benefit district in which the member resides.

Date:

By: the Anne Arundel County Ethics Commission

¹ An "enterprise", while not defined in the ethics law, is defined by Webster's II, New Riverside University Dictionary, Houghton Mifflin Co., 1988, to be "an undertaking, especially one of great scope, complication, or risk; a business organization." The commission believes that an SCBD is a business organization, albeit not for profit, that is engaged in a lawsuit. Both the organization and the lawsuit constitute an enterprise.