

## **Anne Arundel County Ethics Commission**

### **Advisory Opinion**

**00-2**

#### **Issue:**

Whether a county council member may vote on legislation that would permit the storage of school buses on residential property where the member is an insurance agent for one of the bus companies that will be affected by the passage of this legislation.

#### **Background:**

One of the county council members is an insurance agent for a company that underwrites the insurance policy for a school bus company. The council member is the agent responsible for this policy and receives an annual commission for this particular account.

Bill 78-99, now pending before the county council, permits school bus storage on lots in residential districts, under certain conditions, if school buses have been continuously stored on those lots since at least October 23, 1988. In effect, this legislation, if passed, will legalize activity that has been ongoing for over ten years in a fairly small number of locations. The school bus company allegedly meets the criteria to become a legal use if the legislation is passed.

#### **Discussion:**

Two sections of the ethics law apply to this inquiry brought by a member of the county council. Section 3-101(a)(2)(i) prohibits an employee (including a council member) from participating in any matter in which one of the parties to the matter has a business, contractual, or other financial relationship with the employee. The relationship of insurance agent and insured may not be contractual, but certainly qualifies as a business and financial relationship. The insurance agent is the liaison between the insured and the insurer and provides assistance to the insured as necessary. The agent receives a commission for this service and the insured covers the commission in its premium.

The insured school bus company can be considered a party to the matter, because it will be directly affected by the outcome of the legislation in a specifically defined way. While the entity is not a named party, the ethics commission does not believe that the law should be so narrowly construed as to require this legalistic interpretation. The State Ethics Commission, interpreting a law similar to the county's ethics law has stated that to be involved as a party requires more than a general interest, but would include involvement in "some specified and clearly defined role; the entities would have to be identified as parties to a transaction and likely to be impacted by the transaction in the usual legal sense of the term." See, State Ethics Commission Opinion, 80-17, COMAR, 19A. The Anne Arundel County Ethics Commission has

previously advised that the recipient of a grant appropriated through the budget legislation is a party to that matter. See, AO-98-39.

Section 3-101(a) would apply to prohibit the council member from participating in any matter in which the member has an interest. The council member has an interest in maintaining the good will and business of the school bus company. A vote in support of the position favored by the insured would presumably benefit the school bus company and would enhance the business relationship between the entity and the council member. A vote against the legislation would have the opposite effect. It is not hard to conclude therefore, that the council member has an interest in the outcome of this legislation.

Section 3-102 is similar to the provisions of §3-101, but applies exclusively to members of the county council. " 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." There is a presumption of a conflict where the council member has a "close economic association" with a person who will be impacted by the legislation, "differently from other like enterprises or interests" §3-102(b)(2)(ii). The council member has a close economic association with a school bus company that will be affected differently from other school bus companies.

**Conclusion:**

The ethics commission advises that the council member is prohibited by §§3-101 and 3-102 from participating in any aspect of the legislative process involving Bill 79-99. The commission acknowledges that the provisions of §3-102 are neither artfully drawn, nor easy to understand. But the intent of the conflict of interest provisions is clear - to prevent a county employee from participating in any matter in which private interests could affect the employee's judgment. The ethics commission has previously advised that participation in matters involving the financial interests of private clients is not appropriate, where they will be affected in a way that is different from other similar businesses. See, AO-99-26, AO-99-27. This advice applies whether the council member is a lawyer, doctor, accountant, bookkeeper, or psychic advisor. It also applies whether the economic association consists of compensation paid through salary, fees, or commissions. The bottom line is that a business relationship exists in these situations, and business relationships depend to a certain extent upon the good will of both parties. An employee should not be placed in a position where the employee's loyalties could be divided between personal interests and the public good.

Date:

By: the Anne Arundel County Ethics Commission