

## **Anne Arundel County Ethics Commission**

### **Advisory Opinion**

**00-57**

#### **Issues:**

1. Whether a county council member may participate in impasse hearings involving the firefighters' union, if the member has a nephew who is a firefighter in the county.
2. Whether this council member is required to leave the council chambers if a firefighter appears during the invitational part of a county council hearing, to offer testimony about labor union matters.

#### **Background:**

A member of the county council, who is also the chairman of the council, has a nephew who is a firefighter with the county fire department. This fact has been disclosed annually on the council member's Financial Disclosure Statement.

Under the Anne Arundel County Code, Article 8, §4-110, procedures are established for resolving an impasse between a union and the county administration. Those procedures may include, if all other measures fail, a public hearing before the county council. After a public hearing, the county council is authorized to make a final decision, resolving the impasse. §4-110(f). Since an impasse has been reached in the negotiations between the administration and the firefighter's union, it is possible that the county council will in fact, be the ultimate arbiter of the disputes between them.

Possibly in anticipation of this procedure, a number of firefighters have appeared at council hearings, and have offered comments during that portion of the council hearing where members of the public are invited to address the council on any matter. The county council's Rules of Procedure, §4-101, include this invitation to the audience as part of its regular agenda for legislative hearings. As the presiding officer of the council, the chairman officially extends this invitation. The chairman also limits the amount of time permitted to each speaker.

#### **Discussion:**

Several sections of the ethics law apply to these issues. Section 1-101(t), defines "relative" to include a nephew. §3-101(a) prohibits an employee, including a council member, from participating in any matter in which a relative, or the relative of a spouse, has an interest. Section 3-102(a) and (b)(2)(iv) taken together, create a presumption that a council member's independent judgment will be impaired as to any legislation in which a relative, or the relative of a spouse, has an interest. For these reasons, a council member whose nephew is a firefighter, is subject to the same prohibitions and restrictions imposed by the law upon a council member

whose spouse is a firefighter. See, AO-98-105, and IO-00-44.

An impasse hearing may not technically qualify as legislation, within the meaning of §3-102, but it certainly qualifies as a "matter" under §3-101(a). Therefore, under either section of the law, a council member would be prohibited from participating in an impasse hearing with the firefighter's union, if the member's nephew is a firefighter with the county. A council member who is not participating in legislative or other matters should avoid being present for the discussion, debate, or vote on those matters. A council member's presence can be a deterrent to open discussion, since colleagues may be reluctant to express views that run counter to another's personal interests.

On the other hand, it is not necessary for the chairman of the council to leave the room if a firefighter appears and offers comments relative to labor negotiations during the invitational portion of the hearing. During the invitational part of the council hearing, a council member has no way of knowing with certainty, who will appear to give testimony. Presiding over council hearings is an administrative function, and inviting the audience to give testimony is part of that function. The ethics commission does not believe that it is inappropriate for any council member to listen courteously to testimony offered during this time. It would be inappropriate for the council member to participate - to make comments or ask questions - in response to such testimony.

**Conclusion:**

The commission advises that a council member who is the uncle, by blood or marriage, of a county firefighter, may not participate in an impasse hearing involving the firefighter's union. The council member should not be present during that hearing. However, a council member may be present during the invitational portion of a county council hearing, and may listen to testimony offered by members of the public, including firefighters. Finally, the commission believes that the chairman may continue to dictate the time limits for providing testimony during the invitational part of the hearing. The commission concludes that this action is of such minimal significance, as to be considered administrative or ministerial in nature. Administrative or ministerial participation in a matter is not prohibited by the ethics law.

Date:

By: the Anne Arundel County Ethics Commission