

August 1, 2000

Re: IO-00-105

At your request, the ethics commission reviewed a number of advisory and informal opinions it had issued regarding the participation of a county council member in matters involving the fire department where the member is related to a fire department employee. Because -- is also directly affected by these opinions, a copy of this letter is being sent to -- as well.

As a result of this review, the ethics commission believes that a clarification of its position is necessary to ensure that conflicts of interest are avoided, while at the same time, you are able to participate as fully as possible in the legislative process. Noting the legislative intent to prevent even the appearance of a conflict of interest, the ethics commission has liberally construed the law to prohibit your participation in matters where it may appear that your participation could affect your spouse's job opportunities. However, as you have pointed out, there are matters of interest to the fire department that do not involve any legal or equitable economic interest of your spouse. You pointed out, and the fire chief has confirmed, that matters of transfer to different duty stations or different shifts follow a prescribed and objective procedure and do not permit for favoritism between supervisor and subordinate. Promotions are also handled by standardized procedures and are based on test performance and oral interviews. For those reasons, you believe that your participation in many fire department matters can have no effect on your spouse's career; that your position with respect to most fire department issues can neither be rewarded nor penalized by the resulting treatment of your spouse on the job.

The ethics commission believes that the interest of your spouse in the business of the fire department extends at the very least to matters affecting salary, pension, conditions of employment, and matters of general concern to the firefighter's union. Other matters may also affect -- interests. For example, if -- is the driver of a fire engine, -- may be interested in a budget item for new, safer, or technologically improved apparatus. If -- is a paramedic, -- may be interested in whether more paramedics will be hired, insofar as this decision may impact -- overtime opportunities or obligations. Other matters, such as the example you suggested, of determining the location of a new fire station, may not affect those interests. The possibility that a conflict of interest may exist with regard to a particular matter depends upon the facts of the particular situation. See, Montgomery County Board of Appeals v. Walker, 228 Md. 574, 579 (1962). It is not possible to enunciate a definitive rule with regard to all fire department matters that may be of concern to the county council.

Under §3-102(c) of the ethics law, a council member with an apparent conflict of interest may file a "sworn statement that describes the circumstances of the apparent conflict and the legislation to which it relates and asserts that the Councilmember is able to vote and otherwise to participate in legislative action involving the apparent conflict fairly, objectively, and in the public interest. This provision would apply to you if you believed that your participation in a specific matter involving the fire department could not affect your spouse's conditions of employment or other interests.

The ethics commission advises that you submit such a statement as to any fire department matter in which you believe that your participation would not present a conflict of interest. For those matters that do not involve specific legislation but may involve constituent service or other types of non-legislative matters, you may submit a similar written disclosure, under the provisions of §3-101(b) of the ethics law.

I hope that this letter satisfactorily addresses the concerns you expressed to the ethics commission, and that we can work together to establish reasonable parameters for your participation in fire department matters of interest to the council and to your constituents.

Sincerely,

Betsy K. Dawson  
Executive Director