April 11, 2000
Re: IO-00-44

You asked for clarification of AO-98-105, which advised that as a council member, you may not participate in any matters "involving the fire department's budget, personnel, duties and responsibilities, or other issues", including union issues. The advice was based on two sections of the ethics law. Section 3-101(a)(ii) prohibits any employee from participating in a matter if the spouse of the employee has an "interest" in the matter. Section 3-102(a) prohibits a council member from participating in any legislative action in which a "personal interest" tends to impair the council member's independent judgment. A personal interest is presumed to exist if the council member's spouse has an interest in a matter that would be affected by the council member's vote on proposed legislation. An "interest" is defined as "any legal or equitable economic interest. . . " §1-101(n)(1).

You asked whether these provisions, and the advice given to you in AO-98-105, would apply to the county council's consideration of LOSAP funds, "508" funds, and staffing or equipment for fire companies.

By way of preface, the ethics commission notes that in Anne Arundel County, the citizens are served by both a career and volunteer fire service, under the operational supervision of the chief of the fire department. While both the volunteer and career services are critical to the well-being of the county, there have traditionally been areas of conflict and disagreement between these groups. The volunteers manage their own corporate affairs, and they participate in fire department operations in various ways, including membership on the fire advisory board. Despite the high level of cooperation between these services, the fact remains that in many matters, the agendas and goals of the volunteer and career fire service differ significantly. Often these differences concern funding. With these considerations in mind, the ethics commission has reviewed your questions.

The "Link of Service Award Program"(LOSAP), set forth in Article 18, "Public Safety", §1-206, *et seq.*, of the Anne Arundel County Code, provides retirement benefits for volunteer firefighters. The amount of the benefit is determined by the number of points accumulated by a volunteer firefighter who has reached a certain age, and has served for a specified number of years. Varying numbers of points are awarded for completion of training courses, hours of sleep-in duty, stand-by duty, participation in drills, elected or appointed service in a fire company, attendance at meetings, and for responding to calls. The benefits awarded under this program are part of the fire department's budget. Over the years, this program has had its issues, including concerns about the awarding of points. It is possible, if not probable, that the program will be reviewed by the county council and the administration and that it may be subject to legislative changes. In that case, the chief of the fire department may have significantly different ideas than the volunteer service, about how this program should be administered, or how the points for service should be calculated or awarded. The county council and county executive may find themselves in the middle of a dispute between the volunteer service and the fire department administration over this program.

The "508" funds to which you refer, are funds appropriated by the State to the counties,

pursuant to Art. 38A, Fires and Investigations Article, Code of Maryland 1957, as amended. This money is part of the Senator William H. Amoss Fire, Rescue, and Ambulance Fund, created to promote quality fire protection, rescue, and ambulance services to Maryland citizens. The statute establishes parameters for the expenditure of funds and provides for the distribution of the funds from the state to the counties for this purpose. Local governments are charged with determining how the funds are to be spent within state approved guidelines. Apparently this year, the county will receive several hundred thousand dollars, which it will generally direct toward replacement of existing fire apparatus. There may be some dispute between the volunteer service and the fire department as to the proper distribution and use of those funds. The use of the funds will be ultimately determined through the budget process, and will involve input from the county council.

You also asked whether and to what extent you may participate in matters involving staffing and equipment for fire companies, and capital budget projects for the fire department that are located outside of your spouse's duty stations. Your spouse is a career firefighter, under the supervision of the chief of the fire department. Your spouse's employment with the county fire department creates an interest in any matter that may affect the fire department. Your spouse's duties and opportunities may be directly affected by the creation of new positions (or the elimination of existing positions), the construction and location of new firehouses, the repair, replacement, or addition of fire apparatus, and the other aspects involved in the administration of the fire department. The fire chief and the chief's subordinates assign duties and work stations, participate in performance evaluations, and impose disciplinary measures on fire department personnel.

It would be reasonable for the public to conclude that your spouse's best career interests would be served by your promoting the agenda and preferences of the chief of the fire department. Your assurances to the contrary notwithstanding, there would be, at the very least, an appearance of a conflict of interest, if you were to participate in any matters where your participation could advance the interests of the fire department. To paraphrase an old cliche, what is good for the fire department, is good for your spouse. It would also be reasonable for the public to ask these questions: Would the fire department chief be willing to impose discipline on your spouse if you were going to be voting on his request for the use of 508 funds, or on the reorganization of the service awards program? Would the fire chief turn down your spouse's request for a transfer to another duty station or shift, if your were participating in the consideration on funding the department's proposed capital budget? If you did vote on the budget, and your vote turned out to be the only vote in favor of capital budget funding requested by the fire department, would it be unreasonable to conclude that you were considering your spouse's career opportunities when you cast your vote? According to a recent newspaper article, your spouse contacted members of the county council by e-mail, to request support for the wage increases proposed by the firefighters. It was your spouse's right to do so. According to the article, your spouse pointed out to the members of the council, that it is extremely hard for a firefighter to support a family with the current pay levels in this county. Assuming that the article was accurate, it is clear that your spouse has a real concern for your well-being. Would it not be fair to say that you have an equal concern for your spouse's interests?

The ethics commission concludes that the answer to the specific questions you asked must be that you may not participate in discussions or any other legislative action involving LOSAP, "508" funds, or any other matters affecting the fire department's budget, personnel or equipment. This conclusion corresponds to the conclusion set forth in AO-98-105.

Thank you for your inquiry. If you have any other questions, please call any time.

Sincerely,

Betsy K. Dawson
Executive Director