

July 20, 2001
Re: IO-01-113

You inquired whether and to what extent you may participate in legislative action on Bill 55-01, a bill that adopts new comprehensive zoning maps for the Deale/Shady Side area of the county. One of the proposed changes will permit significantly less residential development on property owned by a non-profit entity on which you serve as a member of the board of directors. That entity wrote a letter to the long range planning division in the Office of Planning and Zoning protesting the proposed change and copies of the letter were provided to the members of the council.

The Public Ethics Law, §3-102(a) prohibits a council member from participating in any legislation in which the council member has a personal interest that "tends to impair the Councilmember's independence of judgment." Under §§3-102(b)(2)(iv) and 3-101(a)(2)(iii), a presumption of impairment exists if the council member is a director of an entity that will be affected by the council member's vote on the legislation. See, AO-00-2, AO-98-39, AO-00-10. For this reason, the council member may not participate in the discussion or vote on any amendments that will affect the entity's property.

The next question is whether the council member may participate in legislative action with respect to other portions of the same bill. In advisory opinion AO-00-167, the commission advised that a council member could participate in legislative activity as to the portions of a bill where it was not certain that the member's interests would be affected. In that case, the mere possibility that the member's interests might be affected did not refute the member's statement that he could participate in those portions of the legislation fairly, objectively and in the public interest. In the present case, there are several recommended zoning changes for areas that presumably will have no effect on your interest. As to those portions of the bill, the commission advises that you may participate in any debate, proposals to amend, or votes on amendments.

The final question is whether you may vote on Bill 55-01 in its entirety. In many previous instances, the ethics commission has permitted a council member to vote on a bill in its entirety even where a portion of the bill presented the member with a conflict of interest. See, AO-98-105, 98-39, IO-00-105, AO-99-87. In most of these opinions, council members were advised that they could vote on the county's budget bill in its entirety even though they were disqualified from participation as to a specific portion of the bill. In these instances, the conflict of interest amounted to a very small part of the bill. In AO-99-87, the commission advised that although a council member might be disqualified from voting on a particular amendment to a comprehensive rezoning bill, the member could vote on the bill in its entirety. That opinion was written prior to the introduction of any comprehensive rezoning bill and was based upon several possible scenarios. It did not apply to a specific situation and did not address the factual situation presented by your inquiry.

In the case of Bill 55-01, there are about a dozen proposed zoning changes in the Deale-Shady Side area. Most of these proposed changes affect small, individual parcels of property.

There are only two large areas proposed for rezoning. One area involves property owned by the state and would permit the development of a some type of recreational park. The other large area consists of about 350 acres proposed to be down zoned from R1 to RLD. This latter area includes the two parcels owned by the entity you serve. This entity's property comprises about one third of the total acreage of the area proposed for rezoning from R1 to RLD. In other words, the property in which you have an interest constitutes a significant portion of the entire bill.

For these reasons, the ethics commission advises that under §3-102(a)(b)(2)(iv) and §3-101(a)(2)(iii), you may not participate in the discussion, amendment or vote on the large area that is proposed to be changed from an R1 to an RLD designation. You may participate as to other portions of the bill that will not affect the entity's interests, but you may not vote on Bill 55-01 in its entirety.

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

Sincerely,

Betsy K. Dawson
Executive Director