

November 21, 2002
Re: IO-02-109

The ethics commission directed me to write to you in your capacity as the representative of the county executive. The commission recently considered the lease of 252 West Street by the Committee to Re-elect Janet Owens in connection with the passage of Bill 62-02, legislation sponsored by the county executive.

The Public Ethics Law, §-203(b)(4) and §3-101(a)(i), creates a presumption of a conflict of interest with respect to any official action by the county executive if the county executive has a "business, contractual, or other financial relationship" with a party whose interests would be affected by that official action. See also, §3-101(a)(v).

The law further provides that the county executive shall file a sworn statement with the ethics commission describing the circumstances and details of the conflict and shall assert that the county executive is able to participate fairly, objectively, and in the public interest. If the ethics commission agrees, then the county executive may take official action regardless of the presumed conflict of interest.

Bill 56-01 was passed on August 21, 2001, and signed by the county executive on August 24, 2001. The bill pledged the anticipated incremental property taxes from the Parks Place development, which included the lot 252 West Street, to a fund to repay the debt service on \$25,000,000 of bonds issued by the city to help finance the development. Bill 62-02, extending the termination date on Bill 56-01 by one year or longer, was introduced by the council chairman at the request of the county executive on July 1, 2002. It was enacted on August 19, 2002.

The Committee to Re-elect Janet Owens leased 252 West Street from approximately July 15, 2002 through November 2002 for use as a campaign headquarters. The rental fee was \$400 per month, plus the costs of permits and additions to the trailer located on the property. The trailer and the additions will remain on the property upon the expiration of the lease. The Committee had contacted several people about renting an office on the inner West Street corridor for maximum visibility. The rental fee was in the range sought by the Committee, and is probably a fair market value, given the characteristics of the facility, and the lack of true comparables in the area. There were no other places available that suited the needs of the committee. As the campaign manager, you approached Mr. Parks, the owner of the proposed Parks Place development about the rental.

You stated that the "Committee to Re-Elect Janet Owens" is a legal entity created under State law, implying that its decision to rent 252 West Street was a decision that cannot be attributed to the candidate. The commission disagrees with this conclusion. The Committee was acting as the authorized agent of the candidate. The county executive was, or should have been aware, that the property which served as her campaign headquarters, was part of the legislative package that was introduced by the county council at her request. A citizen may reasonably question the impartiality of an elected official who sponsors legislation that will benefit a person with whom the official has a contractual relationship.

In this case, Bill 62-02 extended the deadline on a previously enacted bill. The legislation merely reaffirmed the county's previous decision to support the Parks Place Development. This fact, as well as the apparent arms-length negotiations as to the terms of the lease of 252 West Street, has provided the ethics commission with substantial reason to conclude that the county executive could take "official action" on this legislation "fairly, objectively, and in the public interest."

In the future, the commission advises that in order to comply with the Public Ethics Law, the county executive should disclose to the ethics commission all relevant facts of any apparent conflict of interest prior to taking official action involving any person with whom she or her authorized agents have contracted.

Sincerely,

Betsy K. Dawson
Executive Director