

November 13, 2002
RE: IO-02-141

You inquired whether you may testify on behalf of an applicant for a liquor license before the Annapolis City Liquor Board. You are the chairperson of the Anne Arundel County Board of License Commissioners (the county liquor board). The applicants are a family whom you have known socially for ten years. The applicants' lawyer would like you to testify as to the good character of the applicants, the fact that the premises for which the applicants seek a license is close to your county office and would not present a problem in the neighborhood. You also would testify that the county liquor board has "split" a liquor license before, giving one part of the license to one entity, and the other part of the license to a different entity on the same premises. The applicants are seeking the same time of "split" license for their business.

You requested this information on November 4th, with the hearing date scheduled for November 6th. I told you that I could not get a commission opinion by that time but at your request, I gave you my opinion by phone, and faxed two previous ethics commission opinions to you. For future reference, I suggested that you seek an ethics commission opinion even though it would be issued after the hearing date and you agreed.

The ethics commission has previously issued two opinions on the propriety of giving character and other testimony, when it is sought because of a county employee's official position. In IO-97-27, the commission advised that a member of the county council should not give character testimony about a county employee before the Board of Appeals. The commission reasoned that the testimony of a council member would have undue weight, because the county council appoints the appeals board members, and because the board is subject to the budgetary oversight of the council. Testimony given in this circumstance would violate '3-104(a) prohibiting an employee from using the prestige, title, or authority of the office for the gain of another. In AO-00-05, the commission advised that an employee who was an official of a collective bargaining unit, and a member of the county personnel board, should not give character testimony about any union member to the board, even if the official was abstaining from participation as a board member. The commission concluded that a county official could provide factual evidence that is unobtainable from other sources and that was relevant to the matters before the board.

In both of these opinions, the county employee was expected to testify before county boards. In your case, you would be testifying before the board of another jurisdiction. The apparent conflict of interest would exist in your case as well, since the county liquor board and its chairman might be accorded significant consideration by the liquor board of the city. The testimony that you are being called to give can easily be obtained from other sources. Character evidence as to the applicants' integrity can be offered by any number of social or business friends. The propriety of issuing a liquor license in the neighborhood of the county liquor board office is opinion evidence that can be offered by any other neighbor in the area. And the previous practices of the county liquor board in splitting licenses is public information that is readily available from the liquor board's staff. It is your position as the chairman of the county liquor board that makes your friendship with the liquor license applicants so desirable and your testimony so valuable. For this reason, and for the reasons cited in the above-referenced opinions, the ethics commission advises that '3-104(a) bars you from providing the type of testimony requested by the applicants in the proceeding before the city liquor board.

Thank you for your inquiry.