

April 9, 2002
Re: IO-02-39

You inquired whether you may continue serving on the personnel board while you run for election to the Anne Arundel County Council. You are currently the chairman of the personnel board. In considering your inquiry, the ethics commission reviewed the state's "anti-Hatch act", the county Public Ethics Law, and early opinions of the State Ethics Commission and its predecessor, the State Ethics Board.

The powers and duties of the personnel board are set forth in the Charter, ' ' 519 and 520. The primary function of the board is to hear disciplinary grievances and other appeals from decisions of the personnel officer. The board also has the duty to consult with and advise the county executive on matters relating to the classified service and the operation of the merit system. It hears appeals from actions concerning eligibility lists, methods of examination, certification and promotion. The chairman of the personnel board runs the meetings, and makes rulings on various matters that come up during hearings.

Participation in political activity by government employees has been a long-standing issue in many jurisdictions. In the federal government, the Hatch Act restricts or prohibits many federal employees (and some state and local employees who work on programs involving federal funds) from participating in political activities. In Maryland, a state law commonly called the anti-Hatch Act, was enacted covering both state and local government employees. In pertinent part, this law provides that employees of local entities the right to "freely participate in any political activity and express any political opinions." Annotated Code of Maryland, Art. 24 ' 13-103. The law also provides that the restrictions (against participating in political activity while in the workplace, or advocating the violent overthrow of the government), "are the only restrictions on the political activities imposed on employees of a local entity, except for the restrictions imposed on employees of a board of supervisors of elections. . . ." ' 13-104. If this anti-Hatch Act applies to you, as a member of the personnel board, there would be no county law that could effectively prohibit your continued service on the board while you campaign for election to the county council.

The applicability of the anti-Hatch Act to the present case depends on whether the you are considered to be an "employee". It is true that members of the personnel board are defined as employees for purposes of the ethics law. Anne Arundel County Code, Art. 9, ' 1-101(f)(1)(ii). However, you may not be considered "employees" for purposes of the Hatch Act, since the term "employee" in the state law, does not generally include people who serve as "officials". The evidence suggests that the county differentiates between "officials" and "employees" in interpreting the anti-Hatch Act, because in at least one instance, the county has limited political activity by its "employees" - the members of the ethics commission. The Anne Arundel County Charter, Art. X, ' 1001(d) prohibits political activity by members of the ethics commission. In other words, the county considers the members of the ethics commission to be "employees" for purposes of the ethics law, but "officials" for purposes of the anti-Hatch act. The county has determined that "officials" may be prohibited from engaging in political activity.¹ Under this

¹ Of course, the county's interpretation may be wrong. It is not settled in the law whether

conclusion, since members of the personnel board are also considered to be "officials", the anti-Hatch act would not apply to you, or the other members of the personnel board. Therefore, ordinances or regulations could theoretically be enacted to limit participation in political activity by members of the personnel board.

Assuming that the county may restrict political activity by personnel board members, the question is whether there is any provision in the Public Ethics Law that would prohibit political activity where such activity would create the possibility of a conflict of interest. The only provision that may apply to this activity is ' 3-105(b)(2), which states that "an employee may not. . . hold any other employment relationship that would impair the impartiality or independent judgment of the employee". It would seem to be a stretch to argue that running for elective office is "an employment relationship" within the meaning of the phrase. However, the predecessor to the State Ethics Commission, the State Ethics Board, found that running for office did constitute prohibited "outside employment", in violation of the Code of Ethics. Specifically, the Code of Ethics provided that,

It shall be considered unethical for any State officer or employee: . . . To engage in outside employment which may result in conflicts between the private interests of the officer or employee and his official State duties and responsibilities or which impairs or could reasonably be expected to impair his independence of judgment in the exercise of his official duties.

In Opinion 102, the Ethics Board decided that a member of the Maryland Public Service Commission could not continue to serve on the commission while he was running for election to Congress. In that 1978 decision, the Board first determined that the PSC is a quasi-judicial body because it holds hearings, considers evidence, determines adjudicative facts and interprets applicable law. The board then applied the Canons of Rules and Judicial Ethics, Canon XXIX, to the situation. That canon provided that,

While holding a judicial position, [a judge] should not become an active candidate either at a party primary or at a general election for any office other than a judicial office. If a judge should decide to become a candidate for any office not judicial , he should resign in order that it cannot be said that his is using the power or prestige of his judicial

the anti-Hatch Act applies to officials as well as employees. See, Att'y Gen. Op. No. 98-003.

position to promote his own candidacy or the success of this party.

In its opinion, the Ethics Board cited a number of New York Bar Association cases standing for the proposition that judges, or members of quasi-judicial administrative bodies, should not run for political office while serving in those capacities. As to the member of the Public Service Commission, the ethics board concluded that, "the inherent nature of the conflict between exercising functions judicial in nature and becoming a candidate for public office makes the simultaneous exercise of both activities incompatible."

The ethics board applied the same judicial standard in Opinion 42, advising that an employee relations hearing officer in the State department of personnel could not also serve in the General Assembly. See also, Opinion 106 (ruling that an assessor in the State Department of Assessments and Taxation could not maintain his employment while running for office), Opinion 126 (assessor could not run for central committee), and Opinion 128 (a county state's attorney could not run for town councilman, because while not in a quasi-judicial position, the office is "important and sensitive").

The opinions of the Ethics Board have been incorporated by reference by State Ethics Commission. See, Opinion 80-02. In this opinion, decided in 1980, the State Ethics Commission reluctantly concluded that a state official was not prohibited from running for office, because the "outside employment" provision of the old Ethics Code had been deleted from the new State Public Ethics Law.² Instead, the ethics commission said,

. . . we do not have a general jurisdictional basis to reach the conclusions set by the political activity opinions of the old Board even though we believe those conclusions contain sound guidance for State employees and officials who exercise quasi-judicial power or who hold important and extremely sensitive State positions.

The ethics commission believes the reasoning of the Ethics Board to be persuasive. You hold a position on the personnel board that requires a high degree of public trust in your impartiality, free from political influences. For this reason, the commission advises you that

² The State Public Ethics Law was amended in 1981 to add the "outside employment" provision 1981, the year after Opinion 80-02.

although there is no specific "outside employment" provision that prohibits continued employment on the personnel board while you seek political office, the quasi-judicial nature of your position suggests that you should resign from the board to seek office. The primary duty of the personnel board is to hear grievances of county employees. Many, if not most of these employees are represented at personnel board hearings by their union representatives.

Candidates for public office seek the endorsement of the county's employee unions. The unions have historically been very active in county campaigns. It would make good political sense for you to align yourself with the goals of the union representatives who appear before the personnel board in its quasi-judicial capacity. If you appear to be a strong union supporter, you may win the endorsement of the union. This conclusion is not meant to impugn your integrity or the integrity of any collective bargaining unit that issues political endorsements. On the contrary, the whole purpose of the ethics law is to ensure that county employees - and officials - conduct themselves in a way that will avoid "even the appearance of improper influence". One of the duties of the ethics commission is to liberally construe the ethics law in providing advice to "accomplish these purposes". Therefore, the ethics commission advises you that while you are not required to resign from the personnel board while you run for county council, you should resign from the board to avoid the appearance of a conflict of interest.

Thank you for your inquiry. If you have any questions, please do not hesitate to call the ethics commission office.

Sincerely,

Betsy K. Dawson
Executive Director