

July 8, 2002  
Re: IO-02-84

You inquired whether you and -- may vote on the resolution that you submitted to the ethics commission for review. The resolution, if passed and enacted by the voters at the next general election, would permit the county council to enact an ordinance requiring binding arbitration to resolve labor disputes between the various county bargaining units and the county.

The issue arises because both you and -- have relatives in the firefighters union. The Public Ethics Law, §3-102, requires you to abstain from participating in certain matters in which your relatives have an interest. However, there is also a provision in the law that permits you to file a sworn statement, stating that you are able to participate in the legislative action involving the apparent conflict fairly, objectively, and in the public interest. 3-102(c)(1).

In reconsidering its earlier decision in IO-02-46, the ethics commission has noted a number of differences between the earlier inquiry and the instant one. Specifically, it is not certain that the resolution, if passed, will eventually lead to an ordinance requiring binding arbitration. If the resolution is passed by the council, the charter amendment may not be approved by the voters. Even if the proposed charter amendment is approved by the voters, it is not inevitable that the next elected county council will enact a binding arbitration ordinance.

In addition, the resolution you are proposing, as opposed to a resolution affecting only public safety employees, will affect all union employees of the county. The firefighters consist of about 25% of all represented employees, whereas they comprise almost half of the public safety employees. While the ethics commission does not necessarily conclude that the firefighters union comprises a small part of the resolution, it acknowledges that the firefighters are only one of seven unions potentially impacted by the proposed charter amendment.

Therefore, because of the permissive nature of the proposed charter amendment and the inclusion of all represented employees, and subject to your filing the required sworn statement, the ethics commission will concur that you may participate in this matter fairly, objectively, and in the public interest. This conclusion is supported by two previous opinions of the ethics commission. In AO-00-167, the ethics commission advised that ". . . where legislation *may affect* a council member's interest, but it is by no means certain that it *would affect* that interest, the law permits for deference to be accorded to the council member's judgment, after full disclosure". And in a number of opinions, the ethics commission has advised that where a council member's interest comprises only a small portion of the overall legislation, participation in the whole matter may be allowed. See, e.g., AO-98-110, AO-98-105, AO-98-39(budget bill), IO-02-24/25(small area plan), IO-01-175, IO-01-105(pension plan).

Thank you for your inquiry. Please call if you have any other questions.

Sincerely,

Betsy K. Dawson  
Executive Director

c: The Honorable Cathleen M. Vitale