

April 30, 2003
Re: 10-03-34/36

You recently filed Disclosure of Apparent Conflict of Interest statements, stating that you have relatives who will be affected by Bill 11-03, which is coming up for a vote on May 5, 2003. You also stated that you believe that you are able to vote and otherwise to participate in the matter fairly, objectively, and in the public interest.

Under §3-102(d) of the Public Ethics Law, the ethics commission is required to review your statements and advise you whether it concurs with your determination. The ethics commission directed me to write to you pursuant to this provision and advise you that it does not concur with your determination. Therefore, the commission advises that you may not participate further in any legislative activity related to Bill 11-03.

Bill 11-03 provides that the personnel officer shall have authority to determine what amount toward health care coverage shall be paid by employees who belong to collective bargaining units that have not reached a contractual agreement with the county. If the bargaining unit and the county agree on a contract by the effective date of the legislation, the provisions of this bill will not apply to them. At present, there are five units that are in contract negotiations with the county. Those units include the fire fighters union (598 employees), the police sergeants union (74 employees), the FOP (551 employees), the deputy sheriffs (59 employees), and Local 2563 (402 employees). These unions will be impacted by this bill if they do not reach an agreement with the county by the bill's effective date. Of this total, firefighters comprise about one-third of the employees likely to be impacted.

The bill also provides that there will be no merit or longevity increases for employees of those unions who would otherwise be entitled to those increases within the next fiscal year.

There are three bargaining units that will not be subject to this legislation because they have one year left on their existing contracts. These employees, members of Local 582 and the unions representing detention center employees, will continue to be subject to the terms of their existing contracts. The legislation will not *affect non-represented* employees.

The issue raised by your participation in this legislation is found in §3-10-2(b)(2)(iv) of the ethics law. That provision creates a presumption that the existence of an economic interest of the council member's relative in legislation "tends to impair a Council member's independence of judgment". The presumption may be rebutted, but only by objective facts that would tend to obviate the conflict of interest. A statement that a council member is able to participate objectively and in the public interest without any mitigating factors is simply not enough to overcome the presumption.

In the case of Bill 11-03, one of your relatives, a spouse, is apparently not eligible for a merit or longevity increase at this time but will be affected by the potentially significant increase in health care costs. The other relative will be affected by the freeze on salary increases as well as a likely increase in health care costs. These relatives have an economic interest that would be affected by your vote on Bill 11-03.

Over a period of several years, the ethics commission has issued a number of opinions interpreting §3-102(b)(2)(iv) of the ethics law.

- In IO-02-46, the ethics commission advised that a council member could not participate in a proposed Charter amendment that would require the county council to approve binding arbitration for public safety unions. The commission quoted from IO-00-105, stating that,

"the interest of your husband in the business of the fire department extends at the very least to matters affecting his salary, pension, conditions of employment and matters of general concern to the firefighters' union." See also, IO-O1-175, IO-00-44, AO-00-57, AO-98-105.

- In 10-02-84, the ethics commission advised that two council members could participate on legislation that would permit - but would not require- the next elected county council to enact binding arbitration. In this case, the commission also noted that the charter amendment would apply to seven unions, not just the public safety unions and that the firefighters would comprise about 25% of the affected employees.
- In 10-02-86, the commission reiterated its position that the council members could not participate in legislation that would require the next county council to enact binding arbitration. The proposed charter amendment in this resolution also affected all collective bargaining units - not just public safety unions.
- In IO-03-05 and IO-03-09, the ethics commission advised that council members with relatives in the fire department could not vote on a proposed bill covering only public safety employees where firefighters comprised the second largest affected group, or approximately 33% of all affected employees.
- In IO-03-12, the ethics commission advised that a council member could not vote on legislation creating the binding arbitration provisions for public safety employees, where the council member's uncle was a member of the police sergeants union.

There have been instances where the ethics commission advised that council members could participate in legislation affecting their relatives.

In IO-00-105, the ethics commission advised generally, that the interest of a career firefighter, the spouse of a council member, "extends at the very least to matters affecting his salary, pension, conditions of employment, and matters of general concern to the firefighter's union." In that opinion, the commission acknowledged that some matters, for example, the location of a new fire station, might not affect those interests.

In AO-98-110, the ethics commission advised that while a council member was precluded from participating in legislative matters involving the helicopter service of the police department because of the member's participation as a volunteer with that unit, the member could still vote on the overall budget bill.

In AO-98-105, the commission advised that a council member with a relative in the fire department, "cannot participate in any way in matters involving the fire department's budget, personnel, duties and responsibilities, or other issues. The council member cannot participate in matters involving firefighters' union issues". The opinion did not preclude the member from participating in the general county budget.

In AO-98-39, the commission advised that while a council member could not participate in that portion of the budget bill that provided a grant to an entity on which board the member served, the member could vote on the overall budget bill.

In IO-02-24/25, the commission advised that a council member might be permitted to vote on some amendments to a small area plan, even though the member had a client who would be affected by one of the possible amendments. The council member was not permitted to participate in the specific amendment *affecting the client's interests*. See, also, 10-0 1-113.

In IO-01-175 and IO-01-105, the ethics commission advised that a council member with an affected relative could vote on the county's personnel bill that affected all county employees, and on a pension bill that did not affect the member's relative.

These opinions, without exception, stand for the proposition that members of the county council may not participate in legislation in which they have relatives that will be directly and immediately affected by the member's vote, unless all county employees will be affected in the same way by the same vote. Even in cases of legislation impacting all county employees, the council members were advised that they could not participate in those portions that specifically affected their relatives. In the case of Bill 11-03, your relatives will assuredly be directly affected your votes. In one case, the relative police sergeant may be deprived of an anticipated longevity increase. In both cases, the relative employees may face significant increases in their contributions to their health care coverage.

Apparently, the unions have taken a position against this bill. A flyer presumably circulated by union members or their supporters, states in part:

"Unfortunately, the County has proposed nothing but take-backs and reductions. The most significant County proposal includes no cost of living raises, frozen merit steps, frozen longevity and dramatic increases in the cost of health care to employees. As an example, employees that now pay nothing for their health insurance will have to pay as much as \$78.40 a month for the same coverage... This is simply unacceptable and we must all work together to defeat Bill 11-03. . ."

The flyer then advises union members to contact all seven council members and to show up for the public hearing.

The conclusion of the ethics commission is based solely upon the presumption of a conflict of interest created by §3-102(b)(2)(iv). The commission does not believe that you offered any facts that would overcome this presumption.

Sincerely,

Betsy K. Dawson
Executive Director