

September 25, 2003

Re: IO-03-85

You inquired whether it would be permissible for you, as a current member of the Planning Advisory Board, to represent a client before the Board of Appeals on the rehearing of a variance that was previously granted. The ethics commission advises that under §3-105(c)(1)¹, you are prohibited from representing a client in this matter.

Section 3-105(c)(1) prohibits an employee from assisting or representing any person “in connection with a matter in which the county has an interest, except in the course of the employee’s official duties”. For purposes of the ethics law, volunteer members of boards and commission are considered county employees, so this provision would apply to you. The county, through the office of planning and zoning, has requested a rehearing on this matter. It clearly has an interest in the matter and has taken a position in this matter that may conflict with the position of your client. The ethics commission has consistently interpreted §3-105 to prohibit representation of a client where the client’s interest may be competitive with, or adversarial to the county’s interests, and where the representation would have some connection with the agency with which the employee is affiliated. See IO-00-27 and opinions cited therein. Through the PAB, you work closely with, and provide advice to the planning and zoning office. For this reason, the ethics commission concludes that you may not represent a client in a matter involving the office of planning and zoning.

Thank you for your inquiry.

Sincerely,

Betsy K. Dawson
Executive Director

¹ Bill 38-03, approved by the county council on September 15, 2003, §5-104(a)(1) expressly prohibits an employee from representing a person before a governmental unit or employee of the county.