

Anne Arundel County Ethics Commission

Advisory Opinion

04-07/08

Issue:

Whether county council members may participate in proposed legislation that will appropriate money from the board of education's excess fund balance to fund a raise for school board employees, where the council members have "qualifying relatives" who are employed by the school board and who have already received, or will receive these raises.

Facts:

On November 19 and December 3, 2003, the Board of Education ratified revised employee contracts with its teachers and other employees respectively. These contracts included a provision for a 1% cost of living raise for all employees. Some of the employees received the raise as of January 7, 2004, and the other employees will receive the increase with their February 4, 2004 paychecks.

On December 9, 2003, the Superintendent of the Schools requested the county to appropriate \$1,882,760 to fund these raises. The money requested by the superintendent is part of the board's six million dollar fund balance left at the end of the 2003 fiscal year. The money cannot be spent by the board of education unless and until it is appropriated by legislation enacted by the county council.

In response to the superintendent's request, the county executive has proposed legislation to appropriate these funds. Two members of the county council have family members who received or will receive these 1% raises under their contracts. One council member has a sibling who is an employee of the board of education and the other council member has a spouse who is a county school teacher.

Discussion:

There are two provisions of the ethics law that are relevant to the first issue of whether the two council members may participate in this legislation. Section 5-110(c) of Article 9, as amended by Bill 38-03, creates a presumption that an interest disqualifies a council member from participating in legislation under certain circumstances. Section 5-110(c)(5) incorporates by reference the conflicts prohibiting participation under §5-101(a)(1). This latter section prohibits an employee from participating in any matter if a "qualifying relative" has an interest in the matter distinguishable from that of the public generally.¹ Both a spouse and a sibling are "qualifying relatives". §1-101(x).

¹ Another potentially applicable provision, §5-101(a)(2)(ii)(1), prohibits participation in any matter in which one of the parties to the matter is a business entity that employs a qualifying relative of an employee. In order for this provision to apply, the ethics commission would have to determine that the board of education is a "party" to the matter.

If these qualifying relatives have an “interest” in this legislation, a presumption of a conflict of interest would be created that would prohibit the council members from participating in the legislation.²

A number of ethics commission opinions have dealt with this issue. In IO-03-34/36, the commission reviewed a number of previous opinions and said,

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 IO-00-105, the commission advised that, “the interest of a firefighter, the spouse of a council member, extends at the very least to *matters affecting his salary*, pension, conditions of employment. . .” (*emphasis added.*)

If the proposed legislation authorized a 1% increase for board of education employees, the council members’ relatives would have an interest in the outcome of the legislation. This interest would create a presumption of a conflict of interest that would prohibit the council members from voting on the legislation. However, the raise has already been approved by the board of education. The employees have either received or will receive this raise regardless of whether the council approves or denies this legislation.

It is true that the board of education will have to find some way to fund this raise if the proposed legislation does not pass. It may seek funding by the county through fourth-quarter transfers toward the end of this fiscal year. It may have to make cuts in other parts of its budget, or it may have to transfer central office employees back to the classrooms or refrain from replacing employees as they retire. The board may even have to consider laying off current employees. However, for the ethics commission to conclude that relatives of county council members may be laid off if this proposed legislation fails would require speculation in which the commission will not engage.

Conclusion:

The ethics commission advises that the county council members may participate in the proposed legislation, because their “qualifying relatives” have no interest in the matter, distinguishable from that of the public generally.

² The presumption of a conflict of interest may be rebutted by “objective facts that would tend to obviate the conflict of interest”. See IO-03-34/36. A presumption cannot be overcome without the presentation of mitigating factors.