

March 22, 2006

***By Electronic and Interoffice Mail***

Re: IO-06-18

You inquired whether the ethics laws would prevent a qualified relative of the county executive from applying for, and participating in the county's agricultural preservation program. The ethics commission advises that there is nothing in the ethics law that would prohibit the relative from applying, or county employees from acting on the application to participate in the program. The applicant is not subject to the ethics law, and is not, by reason of a familial relationship with the county executive, deprived of any rights of property ownership in the county. The only applicable provision of the ethics law, §7-5-101(a)(1), would prohibit the county executive from participating in any matter involving this application.

The county's agricultural preservation program, codified in Article 17, Title 10 of the Anne Arundel County Code, began in 1991, with the purpose of preserving agricultural and woodland property in the county from the relentless onslaught of development. Toward that end, property owners who meet the minimum criteria of the program may apply to sell the development rights on the property to the county in perpetuity. The application is processed according to certain regulations and procedures. At the end of the process, the county, by the planning and zoning officer, may offer to purchase the development rights for a percentage of the appraised fair market value of the property, based on pre-established formulas. Although the county has a limited budget to purchase these easements, no property has ever been rejected for lack of available funding.

As part of the application process, each property is assigned a priority ranking, based on several factors established by the county. Points will be awarded for example, if the property is family owned and operated, has been in the same family for more than 20 years, and if the property is located in the vicinity of other existing preservation easements. To date, no property has been rejected because of its priority ranking.

Each property's value is appraised by an independent appraiser hired by the county from a list of eligible appraisers most recently updated in 1997. The county has for the most part, relied on the services of one particular appraiser who is particularly familiar with the program and with the properties in the area where participation in the program is most prevalent. If the property owner-applicant disagrees with the appraisal, the owner may obtain another appraisal from the eligible list.

If the county offers to purchase an easement, and if the owner tentatively accepts the offer, the county council votes on a resolution approving the installation purchasing agreement. In usual practice, the resolution is introduced on behalf of the county executive, by the chairperson of the county council. Once the contract is approved and signed, and the resolution is passed, the entire file becomes publicly accessible. Additionally, the bond ordinance annually enacted by the county council, includes authority to enter into the installment purchase agreements.

The county executive's duties with respect to the agricultural preservation program are set forth in Article 17, Title 10, and involve general policy oversight. Duties with regard to day to day participation in the program are quite limited. The application process is handled by the agricultural preservation board, the staff of the planning and zoning office, and ultimately, the planning and zoning officer. As to any particular application submitted, §17-10-206 (b)(1) provides that the county executive "shall determine . . . the appropriate terms and conditions for any agreement to purchase an easement in accordance with the requirements set forth in this subtitle or in other applicable provisions of law."

The ethics law, §7-5-101(a)(1) prohibits an employee from participating in any matter in which a qualifying relative of the employee has an interest in the matter distinguishable from that of the public generally and the employee knows of the interest." By its terms, this prohibition would apply to prevent the county executive from exercising the duties imposed by §17-10-206 where one of the parties to the agreement is a qualifying relative. However, under §7-5-101(c) of the ethics law, the county executive may act if required to do so by law, and if the authority to act cannot be delegated. Although the ethics commission assumes that the county executive may delegate the duty imposed by §17-10-206(b)(1) to the planning and zoning officer, the office of law is the appropriate agency to make that determination. If the duty cannot be delegated, the county executive shall "disclose the nature and circumstances of the conflict" and may then participate.

The resolution recommending that the county enter into an easement agreement with the applicant is by standard practice, introduced by the council chairperson at the request of the county executive. This practice is not required by law, and the county executive should not make such a request involving the application of a qualified relative.

Additionally, the county annually enacts a bond ordinance which among other purposes, authorizes funding for the installment purchase agreements. The IPA component of the bond bill constitutes an extremely small percentage of the overall bill. As with previous ethics commission opinions concerning the budget bill, there is no prohibition against participation in the bill by an elected official who may have an interest in a minor part of the bill. *See, e.g.*, AO-98-105, 98-39, IO-00-105, AO-99-87. The county executive should not however, request the introduction of any bill, other than the bond ordinance, that would primarily affect the property of the executive's qualified relative.

The ethics commission notes that the county executive appoints the members of the agricultural preservation advisory board, and that the county executive has repeatedly expressed a commitment to preserve the agricultural character of the county. These actions do not constitute participation by the county executive in a matter involving a qualified relative. For these reasons, and barring any discretionary participation in the matter by the county executive, the ethics commission advises that the ethics law permits the qualified relative to apply to participate in the county's agricultural preservation program, and it further permits county employees to act upon the application.

Thank you for your inquiry.

Sincerely,

Betsy K. Dawson  
Executive Director