

January 23, 2007

Sent By Electronic and First Class Mail

Re: AO-07-14

You inquired whether there are any ethics law issues related to your position on the Planning Advisory Board (PAB) since you are the recently elected president of the Anne Arundel County branch of the National Association for the Advancement of Colored People (NAACP). The ethics commission advises that there is an ethics law provision that would significantly restrict your assistance and/or representation of the NAACP while you serve on the PAB.

Section 7-5-104 of the Public Ethics Law, Article 7 of the *Anne Arundel County Code*, provides that:

(a) Generally. Except as provided in subsection (b), an employee may not, other than in the course of the employee's official duties, assist or represent a person in any matter:

- (1) before any governmental unit or employee of the County;
- (2) in which the County has an interest.

(b) Exceptions. Subsection (a) does not apply to:

- (1) the performance of usual and customary constituent services without additional compensation; or
- (2) assistance to or representation of an employee without compensation in an employment related matter by an employee other than an elected or appointed employee; or
- (3) assistance or representation that is authorized by law or contract.

One of the functions of the PAB is to recommend to the County administration a list of the proposed capital projects and capital improvement programs that should be approved for funding in the next fiscal year or within a certain time thereafter. *Anne Arundel County Charter*, §533. Among its functions, the NAACP advocates for civil, political, and economic rights and opportunities. It also provides assistance to and representation of people in cases where the government is alleged to have violated their rights. The president of the NAACP stated that among the issues to be considered by the organization in the near future are the county's treatment of minority businesses, affordable housing, and other matters.

The Anne Arundel County government has faced challenges from the NAACP in the past on various issues, and will likely face challenges in the future. On January 21, 2007, for example, the *Sunpaper* reported that county police statistics reveal that police have ". . .pulled over African American and Hispanic drivers at a much higher rate than whites." The president of the NAACP reportedly said, "I intend to make it clear that [racial profiling] is not an acceptable practice. . ." The president plans to meet with the county police chief over this matter soon.

This reported incident could lead to a conflict between the NAACP and the county and could potentially lead to litigation. Section 7-5-104 was designed to prevent divided loyalties between one employer and another.

In an earlier opinion, AO-96-104, the ethics commission advised that a member of the PAB who was also an attorney to clients in legal actions against the Anne Arundel County Board of Education could not serve in both positions. The commission advised that,

by participating in the decision-making process on both sides of an ongoing controversy, the member of the PAB, despite his best intentions and regardless of his personal integrity, is sending mixed signals about the impartiality and independent judgment of the PAB.

If for example, the PAB member is asked to consider a capital improvement project for the police department while the NAACP is engaged in a dispute with the police department and the county, how would this controversy affect the member's impartial and independent judgment with regard to the capital project?

For these reasons, the ethics commission advises that for as long as the president of the NAACP is also sitting on the PAB, the president may not assist or represent the NAACP in any matters before a county employee, or in which the county has a potentially adversarial interest with the NAACP.

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

Sincerely,

Betsy K. Dawson
Executive Director