

February 16, 2007

Re: AO-07-15

You inquired whether you, as a member of the county council, are prohibited from participating in a particular piece of legislation that will affect the interests of a client of the law firm where you are employed as an associate attorney. You also asked whether you will be prohibited from participating in any future legislative matter that will affect this client, since the client has a continuing relationship with your law firm. Finally, you have also asked if you may participate in this legislation if your firm ceases its representation of this client on this specific matter. The ethics commission advises that you may not participate in the particular legislation that you described, regardless of whether your firm withdraws from representing this client in this matter. The commission also advises that as to any future legislation that will affect this client “differently from other like enterprises or interests,” your participation will probably be proscribed as well.

As you have explained it, your law firm has had an ongoing relationship with this client, a developer. One of the partners in your firm has been retained to negotiate and draft a joint venture agreement between this client and another person who is the contract purchaser of property. The joint venture plans a mixed-use development for this property, a plan that needs the legislative approval of the county council. You will do no legal work on behalf of this client and since you are a salaried employee of your firm, as opposed to being a partner or owner, you have said that your compensation is not directly tied to the firm’s successful representation of the client or the success of the proposed mixed-use development.

According to §7-5-110(a)(1) of the ethics law, you have a “close economic association” with your law firm because it is your employer, and with the other lawyers in your firm because they are your “associates in business or professional enterprises.” Under subsection (a)(4) you also have a close economic association with the client as an imputed agent, since the law firm with which you are associated is the client’s agent.

Consequently, under subsection (c)(2) of this section, you are presumed to have a conflict of interest that prohibits your participation in legislative action because you will benefit financially “from a close economic association with a person” whom you know has an “interest which would be affected by . . . your participation in legislative action. This presumption applies to any legislative action that will affect your client differently from other like enterprises or interests.” §7-5-110(c)(2).

An “interest” as defined in §7-1-101(15) and by ethics commission opinion, includes a “legal or equitable economic interest.” *See, e.g.*, AO-98-105 (“An ‘interest’ is defined in ‘1-101(n) as ‘ . . . any legal or equitable economic interest’. An employment relationship is both a legal and economic interest.”), AO-99-27, AO-97-42.

Your law firm will gain financially by representing the client. If you participate in legislation affecting this client’s interest, the client’s relationship with your firm is likely to be

affected by whatever action you take. Regardless of the way you vote, the outcome will impact both the client and the client's attorneys.

In AO-99-26, a council member who was also an accountant, was prohibited by the predecessor of §7-5-110 from voting on any matter involving the Tipton Airport Authority. The ethics commission advised that,

The councilmember has a close economic association with clients of the accounting firm because they employ the member to perform professional services. §3-102(b)(1)(i). The clients have - or plan to have - a direct interest in an enterprise that would contract with the Tipton Airport Authority or the county, subject to the council's appropriations for the contracts. Therefore, unless the presumption of a conflict of interest can be rebutted by the council member, §3-102(a) prohibits the member from participating in any legislative activity involving Tipton Airport or the Tipton Airport Authority. In view of the applicability of §3-102 to this situation, it is not necessary to review the applicability of §3-101 to the facts presented here.

The conclusion expressed in the opinion is equally applicable to your situation. Your status as an employee, as opposed to a partner or owner, does not sufficiently distinguish your situation from the situation described in this opinion.

The ethics commission also concludes that your law firm's withdrawal from representing the client on this proposed project would not change the outcome with regard to the prohibition on your participation in legislation affecting this client. Since the law firm has an ongoing relationship with the client, it is in the best interests of the law firm to promote the client's business, even where it does not provide direct representation to the client. It is reasonable to predict that your vote will ultimately affect your own financial interests in some way at some point.

Section 7-1-102(a)(2) of the ethics law states that the people's "confidence and trust is eroded when the conduct of the County's business is subject to improper influence or even the appearance of improper influence." Subsection (c) requires that the ethics law should be "liberally construed to accomplish its purpose."

For these reasons, the ethics commission advises that you may not participate in legislation which affects the client of your law firm, "differently from other like enterprises or interests," regardless of whether the firm represents this client in the creation of this joint venture.

Thank you for your inquiry.

Anne Arundel County Ethics Commission

By: _____
Betsy K. Dawson, Executive Director