

October 15, 2007

Sent By Electronic Mail Only

Re: AO-07-71

You inquired whether you may participate in legislative action involving Bill 76-07. This bill creates a new non-lapsing fund for stormwater management and restoration of tributaries fund (SMART fund). It is a significant piece of legislation. One source of money for this fund will be from new fees imposed on property owners who apply for a grading permit. You said that you are in the process of applying for a permit that would be subject to these new fees. The ethics commission advises that you may participate in this bill.

There are two provisions of the ethics law that apply to your inquiry. Section 7-5-110 concerns legislative action of council members. Subsection(c)(1)(ii) prohibits legislative action by a member where the member has an "interest in an enterprise that would be affected by the member's vote on proposed legislation unless the interest is common to all members of . . . the general public or a large class of the general public." The interest that you have in this bill is shared by a large class of the general public - anybody who is applying or may apply for grading permit, now or in the future. The exemption in §7-5-110(c)(1)(ii) was designed for this purpose.

The other relevant provision of the ethics law, §7-5-101, prohibits an employee from participating in any matter in which the employee has an interest. You clearly have a current interest in this matter. However, the law also provides in subsection (b)(1)(ii) that an exception may be granted to this prohibition by opinion of the ethics commission. The ethics commission has granted this exception in a number of cases where the council member's specific interest is only a small part of the legislation.

For these reasons, the commission advises that you may participate fully in this legislation. The commission further advises that your specific interest should be disclosed at the beginning of the public hearing on this bill.

Thank you for your inquiry. Please call if you have any questions.

The Anne Arundel County Ethics Commission

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By: Betsy K. Dawson, Executive Director