

April 15, 2008

By Electronic Mail Only

RE: Supplement to AO-08-23

Enclosed is a redacted copy of AO-08-23, an advisory opinion issued on this date to one of the members of your board. In view of the concerns you expressed to the ethics commission through the county's liaison to the Planning Advisory Board, the ethics commission directed me to expand on the guidelines set forth in that opinion concerning speaking engagements undertaken by members of the Planning Advisory Board in their personal capacities.

The ethics law does not address the propriety of speaking engagements or other activities undertaken by members in an *official capacity*, as members of the PAB. The ethics law does not address the propriety of communications sent by a PAB member to other members expressing personal opinions about a matter that will come before the PAB. For guidance on this issue, you should consult the office of law. The ethics law does address the possible conflicts of interest that may arise from activities undertaken by a member of the PAB in a *personal capacity* in matters that may come before the board in the performance of its duties.

Of primary relevance to this issue is the prohibition contained in §7-5-104(a) of the ethics law. That provision states:

(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; or
- (2) in which the County has an interest.

This provision means that a PAB member may not represent or assist any person or entity in any matter in which the county has an interest. Since the county generally has an interest in any matter that may come before the PAB, a member may not represent or assist any person or entity as to any of those matters. It does not mean that a member may not express personal opinions in a particular forum. As long as the member is not advocating the position of any person or entity, or promoting the agenda of any person or entity, the member is free to express personal opinions or provide public information in any forum.

Section 7-5-107 prohibits a member of the PAB from intentionally using the prestige of the member's position on the PAB for private gain or the gain of another. This provision means that a PAB member may not use or permit others to use the

member's title as a qualification or by way of introduction of the member. By way of example, an organization may not introduce a speaker as a member of the Planning Advisory Board, or use that title in promoting an event. It would not be acceptable, for instance, for the announcement of an upcoming organizational meeting, to advise that "the keynote speaker for the evening is a member of the Anne Arundel County Planning Advisory Board." The member may be introduced as an environmental activist or as a specialist in planning or whatever other qualifications may have led to the member's invitation to speak. It would also be impermissible for the member to list PAB membership in any self-promotion or advertising. On the contrary, a PAB member who accepts an invitation to speak must affirmatively and unequivocally state that the member is not representing the PAB – or any other person or entity – in expressing any opinions, and that the opinions expressed are those of the speaker.

It would also be advisable for the member to state that the information being provided is either public information or that is information acquired from sources other than the PAB. This statement will negate any appearance that the member is using privileged or otherwise confidential information acquired by reason of the member's public position. The use of such information is prohibited by §7-5-108 when it is used for "personal economic benefit or for the economic benefit of another." The ethics commission has not interpreted this provision to apply only where the speaker is compensated or where the audience must pay admission to the program. Economic gain can be acquired indirectly, by publicity, good will, or resume building opportunities.

Finally, §7-5-106 prohibits a member of the PAB from accepting a gift of more than nominal value, including an honorarium, from a controlled donor.¹ A controlled donor is a person or entity that:

- (1) does or seeks to do business of any kind, regardless of amount, with the County;
- (2) engages in an activity that is regulated or controlled by the employee's governmental unit;
- (3) has a financial interest that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the employee's official duties; or
- (4) is a lobbyist with respect to matters within the jurisdiction of the employee.

¹ Nominal value is usually considered to be less than \$25. In most cases, an employee may accept reimbursement for travel expenses, or a meal that is included as part of a meeting. However, the ethics commission advises that employees, including members of the PAB, check with the commission in advance of accepting any type of expenses or honorarium in connection with a speaking engagement, where the donor is a "controlled donor."

Subject to the limitations set forth in the Public Ethics Law, a member of the Planning Advisory Board has the same right to express personal opinions as any other citizen. Expressing personal opinions does not mean that a person must then recuse himself or herself from participating fully in the business of the PAB. Section 7-5-101 addresses the restrictions on participation in matters by employees, including members of the PAB. It prohibits participation in any matter in which the employee or a qualifying relative has an “interest.” The “interest” to which this provision refers is a “legal” or “equitable economic interest.” It does not mean that an employee may not be interested in the matter. If it did, all the members of the PAB might be prohibited from participating in the business of the PAB, since presumably, most of them are quite interested in planning matters.

I hope this letter adequately addresses your concerns regarding speaking engagements undertaken by members of the Planning Advisory Board. If it does not, or if you need advice with regard to a specific matter, please contact me at your convenience.

The Anne Arundel County Ethics Commission

/s/

By: _____
Betsy K. Dawson, Executive Director