

April 15, 2008

By Electronic Mail Only

Re: AO-08-23

You inquired whether you may make a presentation to the board of the Chesapeake Environmental Protection Association (CEPA) on the state of Anne Arundel County. You are a member of the Planning Advisory Board (PAB), appointed in late 2007. Prior to your appointment, you made the same presentation to another organization and it was as a result of this presentation that you were invited to appear before the board of CEPA. You provided the commission with a copy of the presentation, which includes facts and figures about the tax base, education, the environment, housing affordability, teacher salaries, impact fees, land preservation, and a number of other items. The ethics commission advises that you may make this presentation, subject to certain limitations and guidelines set forth in this opinion.

According to the Anne Arundel County Charter, §533(b), the PAB,

[m]akes advisory recommendations to the Planning and Zoning Officer and the County Council relating to the Master Plan, the zoning maps, and rules and regulations relating to zoning. At such time as the Chief Administrative Officer shall fix, the Planning Advisory Board considers an itemized list of capital projects, or capital improvement programs, which various agencies of the County Government propose to undertake in the ensuing fiscal year and the next succeeding five fiscal years.

In considering your inquiry, the ethics commission considered two provisions of the ethics law. The first one, §7-5-104(a) prohibits an employee (or in your case, a volunteer) from assisting or representing a person in any matter in which the County has an interest. This provision does not apply to you, because in making this presentation, you would not be *assisting* or *representing* an entity in a specific *matter*. You would merely be providing public information to an organization.

The second provision that was considered in this inquiry is §7-5-107(a) which prohibits an employee (including volunteers) from intentionally using the prestige of office or public position for the employee's private gain or the gain of another. Since you indicated that the invitation that was extended to you to speak at this function resulted from another presentation you made prior to your appointment to the PAB, it would be hard to conclude that your position on the PAB was the basis for the invitation. Additionally, since you will not be paid to give this presentation, there is no "private gain" to trigger the prohibition of this section of the ethics law.

Although it is not likely that your presentation would violate any specific provision of the ethics law, the commission expressed concern about the perception that

you will be speaking for, or on behalf of, the PAB in making this presentation. Your presentation, while not explicit, implies that you hold certain opinions about these facts. For example, your presentation states:

AA County preserved 9778 acres by February 2007, significantly fewer than 5 similar counties; Baltimore County preserved 5.7 and Calvert 1.9 times more acres. AA county has almost twice the land area of Calvert County.

This fact is presented in such a way that one cannot help but draw the conclusion that you, and perhaps the PAB, is of the opinion that Anne Arundel County *should* be preserving more land than either Baltimore or Calvert counties.

Another fact included in your presentation is:

The starting salary for a ten-month AA county teacher in public schools with a BA was \$36,339 in FY 2005-2006. The maximum salary for a teacher was \$76,726. . . Estimates of fair market rent prepared by the National Low Income Housing Coalition indicate that a new teacher can, at most afford to rent a one bedroom apartment.

It would not be unreasonable for a person attending your presentation to conclude that you believe that the housing situation vis-à-vis teachers should be remedied, and that your opinion represents the official position of the PAB.

Unless you would in fact, be representing the PAB, which you have indicated you would not be, your presentation could reasonably create the impression that the PAB has adopted certain positions about what the county's planning priorities should be. While you are certainly entitled to hold these opinions, and to express them in a personal capacity, you may not do so in a context where your opinions may be reasonably construed to represent the position of the PAB.

For this reason, and to avoid any confusion, you should expressly state that you are speaking on your own behalf and not for, or on behalf of, the PAB. With that qualification, and subject to the prohibitions contained in §7-5-104(a), the ethics commission advises that you may accept the invitation to give your presentation to CEPA.

Thank you for your inquiry.

The Anne Arundel County Ethics Commission

/s/

By: _____
Betsy K. Dawson, Executive Director

