



CHARLES COUNTY ETHICS COMMISSION

Advisory Opinion 2016-01

DATE: July 27, 2016

This matter came before the Ethics Commission ("Commission") as a request for an advisory opinion. The questions presented were as follows:

Whether a member of a board/commission must recuse themselves from participating in a matter under consideration because either the appointee or a member of their immediate family (as defined by the Ethics Code) held an official position in an organization that has taken a public position on the matter before the board/commission prior to and/or during their tenure as an appointee?

For future guidance, under what circumstances should members of boards/commissions be required to recuse themselves from matters under consideration before them as board/commission members if they have had organized community involvement prior to their appointment as a board/commission member and now that organized group has taken a public position that is now before a board/commission?

In reviewing these issues, the Commission carefully reviewed the provisions of the Charles County Ethics Code. The most relevant provision is Section 170-5, which states in part:

Except as permitted by Commission regulation or opinion, an official or employee may not participate in:

- (a) ...any matter in which, to the knowledge of the official or employee, the official or employee or a qualified relative of the official or employee has an interest.

Charles County Code §170-5(A)(1)(a).

"Interest" is broadly defined, in part, as a "legal or equitable economic interest". Moreover, "qualified relative" is defined as a spouse, parent, child, brother or sister. Noteworthy, this definition is broader than the definition for immediate family, which is simply defined as spouse and dependent children. *Id.* at §170-3.

It is the opinion of this Commission that an official or employee must disclose their own interest or the interest of a qualified relative. However, recusal is not automatic. Whether or not recusal is necessary must be decided on a case-by-case basis. The official or employee should

carefully review Section 170-5 and determine if recusal is required. If the member does not recuse him or herself, and there remains a concern that recusal is required, the mechanism is to file a complaint with the Commission pursuant to Section 170-4(K) of the County Code.

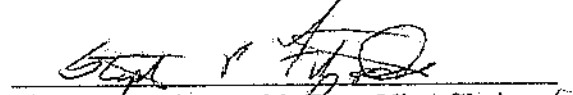
The above interpretation is found to be consistent with the spirit and purpose of the Ethics Code, particularly as it relates to Boards and Commissions. The Commission may grant exemptions to or modifications of the conflict of interest and financial disclosure provisions as it relates to persons serving on Boards and Commissions. *Id.* at 170-4(L). Such modification or exemption can occur so long as it is not contrary to the purposes of the Ethics Code. Persons who serve on Boards and Commissions could very well be the same persons who have been actively involved in community organizations that have or may take positions on issues that are addressed by Boards and Commissions. Such community involvement should be encouraged and these persons should not be categorically prevented from participating in matters pending before County Boards and Commissions. Instead, an individualized assessment should be conducted after disclosure of the interest.

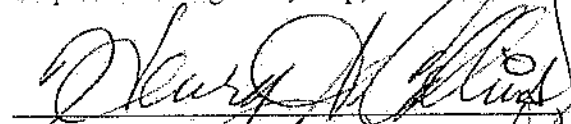
As it pertains to the second question, the question presented is too general to provide an opinion. The specific facts must be reviewed and analyzed pursuant to the provisions of the County's Ethics Code.

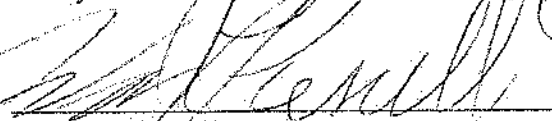
APPROVED THIS 27 day of July, 2016.

ETHICS COMMISSION OF
CHARLES COUNTY, MARYLAND


Rev. Robert C. Buehler, Chairman


Stephen P. Fitzgerald, Esq., Vice Chairman


Henry A. Collins, Jr.


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