

CONFLICT OF INTEREST

PARTICIPATION ON REGULATORY COMMISSIONS WHEN AN IMMEDIATE FAMILY MEMBER SUPPORTS AN APPLICATION OR MAKES RECOMMENDATIONS RELATED TO AN APPLICATION BEFORE THE COMMISSION

CITY OF CAMBRIDGE ETHICS COMMISSION

ADVISORY OPINION OPINION NO. 03-2013

DATED: March 19, 2013

The Ethics Commission for the City of Cambridge received a request for an advisory opinion as to whether it is a conflict of interest for a member of the Historic Preservation Commission (“HPC”) to participate in and vote on an application for a certificate of appropriateness, when the spouse of the HPC member is a participating member of a committee which is recommending that the application be approved.

The City of Cambridge obtained a grant from the Maryland Department of Natural Resources to construct restroom facilities to serve the east side of the municipal marina at Long Wharf Park. The City Commissioners appointed a Long Wharf Advisory Committee which was charged with reviewing proposed improvements to Long Wharf Park and making formal recommendations related thereto. The spouse of one of the HPC members was appointed to this advisory committee. She participated in the review process for the design and location of the restroom structure. The construction of the restroom facilities required the approval and issuance of a certificate of appropriateness from the Historic Preservation Commission.

The City of Cambridge was the applicant for the certificate of appropriateness by the HPC. However, a member of the Long Wharf Advisory Committee made a presentation at the HPC hearing, and the committee formally supported the application. The spouse serving on the HPC properly notified the Ethics Commission and its legal counsel in advance of the HPC meeting and was advised to disclose and recuse himself from participation in the matter, pending the issuance of this formal advisory opinion, which he did.

Section 2-14(4) (e) 4 of the City’s Ethics Code is the applicable provision, which provides, in part: “[A]n official or employee subject to this section may not participate in

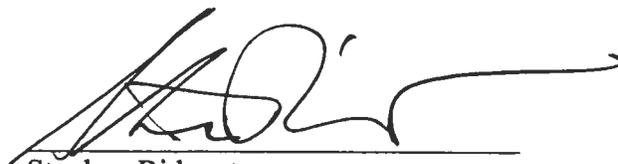
the discussion of any contract or matter or vote on or make a substantive decision about any contract or matter in which he or a qualified relative has a specific interest....”

The Ethics Commission interprets the term “specific interest” very broadly so as to avoid even the appearance of a conflict of interest. By participating in the review process and being part of the committee which formally presented its position to the HPC, the spouse had a specific interest; that being to have the certificate of appropriateness approved by the HPC so that the restroom facilities could be constructed. While there may be no possibility of the spouse benefitting financially from the approval of the application, her participation in the review and recommendation of the project, as a member of the Long Wharf Planning Committee created a specific interest.

If someone has reason to believe that the recommendation of a committee on which he/she is serving may come before a regulatory body on which an immediate family member serves, then he/she should refrain from participating in the discussion and vote of that committee, and completely remove themselves from the issue. In addition, having the committee’s recommendation state, or having the chairperson of the committee making the recommendation provide a written and signed statement that the immediate family member had refrained from participating in the discussion and vote of the committee on the relevant matter, and completely removed himself or herself from the issue, will then provide additional official information that will allow the immediate family member serving on the regulatory body to participate and vote on the matter before the regulatory board or commission. Otherwise, their immediate family member serving on the regulatory body which is making a substantive decision on the matter must disclose and recuse himself/herself from participation and discussion.

Accordingly, we find that it would have been a conflict of interest for the immediate family member serving on the HPC to have participated in the discussion and vote on the matter, where his/her immediate family member actively served on an advisory committee, was present and participated in the discussions, and voted with respect to a recommendation that was supporting the HPC application. The HPC member properly disclosed the potential conflict and recused himself from participation.

Issued this 19th day of MARCH, 2013.



Stephen Rideout
Chairperson
Ethics Commission, City of Cambridge