

Conflict of Interest –
City Council Liaison to
Boards and Commissions

CAMBRIDGE ETHICS COMMISSION
C/O ROBERT S. COLLISON, ESQ.
311 HGH STREET
CAMBRIDGE. MD 21613

ADVISORY OPINION

OPINION 07 -2013

HAVING MET ON AUGUST 14, 2013, AND CONSIDERED AN ANONYMOUS REQUEST FOR AN ADVISORY OPINION AND HAVING CONSIDERED THE LEGAL OPINION OF ROBERT S. COLLISON, ESQ., COUNSEL FOR THE ETHICS COMMISSION,

AND THE ADVISORY OPINION REQUEST HAVING STATED THE FOLLOWING:

It has come to my attention that the City Council's liaison to the ...Planning and Zoning Commission for the City of Cambridge is a city commissioner whose entire livelihood is derived from work revolving around the real estate market ...owning, brokering, leasing and developing real estate within the city proper.

Given that there are 5 city commissioners and the other 4 apparently have no income derived from real estate dealings it would appear that a better choice would be to select a commissioner with no "apparent conflicts".

I am posing this question to you for review within the dictates of the City of Cambridge's "ethics standards".

AND THE MEMBERS OF THE COMMISSION BEING OF THE OPINION THAT THIS REQUEST DEALS WITH AN INTERPRETATION OF THE CITY ETHICS CODE SECTION 2-14(4)(F)(3), WHICH READS AS FOLLOWS:

“A member of city council who might otherwise have a conflict of interest or a potential conflict of interest may not be appointed as a city council liaison to a city advisory board and may not participate in any discussions at any meeting of such advisory board”

THE CAMBRIDGE ETHICS COMMISSION BY UNANIMOUS VOTE HEREBY STATES THE FOLLOWING AS THE OPINION OF THE COMMISSION:

Our research has found no prior opinion from the Maryland Ethics Commission that is directly on point but has found one that has some similarities to the question posed and will be discussed later in this opinion.

In considering this request for an Advisory Opinion, it is felt that one must look first at the clear language of the city code and interpret any possible ambiguities in light of the clear language. It must be presumed that the City Council meant what it said in using the language that it used and that had been approved by the Maryland Ethics Commission.

Upon first reading one might say that every member of City Council “might otherwise have a conflict of interest or a potential conflict of interest” simply because he or she resides in the city and possibly owns or rents real estate that “might” place them in a conflict of interest in a matter that comes before the Planning and Zoning Commission. As we look more closely at the language of the ordinance, however, it would seem clear that the intent of this section of the city ethics code is to exclude as a liaison any person who by reason of his or her employment or other financial interest might routinely have or appear to have a conflict of interest between his or her personal financial interest and the public work of the board or commission. For instance someone who actively works in real estate sales on a regular basis or has a number of investment properties located in the city is in a different position regarding ethical conflicts or potential ethical

conflicts from someone who may only own or rent a home in the city which serves as his or her principal residence.

When the City Commissioner who might be the liaison from City Council to the Planning and Zoning Commission, or another Commission that involves real estate matters, is actively engaged in real estate transactions in one way or another, he or she would potentially have a conflict of interest on every matter that came before the Planning and Zoning Commission or other Commission due to his or her real estate business or ownership of multiple properties in the city. As such s/he would need to disclose the conflict or potential conflict and, in addition, not participate in any discussion during the meeting of the commission. Where there was a conflict of interest, he or she would have to leave the meeting under the current ethical rules.

This language in the code section that states that the liaison “may not participate in any discussions at any meeting of such advisory board” is additional confirmation that there is a need to prevent a city council member who may be considered an expert in real estate or actively engaged in it from discussing any issues before the Planning and Zoning Commission as that precludes the other members of City Council from engaging in such discussions or having any knowledge that such discussions are even taking place. As a liaison, a city council member should not be answering questions that the planning and zoning commission has but rather should be, as liaison, taking those questions back to City Council for discussion and development of the City Council response, not just the response of the assigned liaison.

The role of the City Council “liaison” is not defined in the city code nor are there any allowances or restrictions on the liaison as they relate to his or her participation in the meetings of any Board or Commission. Presumably liaisons are meant to communicate from one body (City Council) to, in this case, the Planning and Zoning Commission and to take information and requests from the Planning and Zoning Commission back to City Council. The liaison is not meant to be the person who tells staff or the commission what they should do or who gives advice when questions are raised in meetings.

It appears from the clear language of the ordinance that it was the intention of City Council to exclude from the liaison position someone who had a special interest in the area of the work of the subject commission, who has a financial interest or a potential financial interest shown because of his/her outside employment, or has other outside financial interest.

While it does not deal with the exact same set of facts as the matter pending before this Commission, Opinion No. 91-4 of the Maryland Ethics Commission provides some guidance for this opinion.

That opinion can be found on the Internet at <http://www.dsd.state.md.us/comar/getfile.aspx?file=advisoryo.1991.04.htm>. In that matter the person asking for the opinion was a prospective appointee as a Deputy Director of the Office of Planning for the State of Maryland. He was also an active real estate agent who was an “independent agent operating within the authority of a licensed real estate broker”. He wanted to be able to complete some real estate transactions prior to becoming a state employee for which he wanted to be compensated and he also wanted to be able to continue his “active involvement in others”.

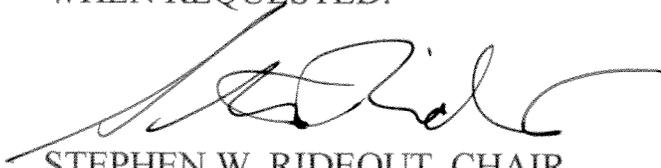
Opinion 91-4 states in part that “... the Requestor he may retain his license as long as he does not engage in active real estate business while he is employed with the Office”. It goes on to state that “this type of situation is one where we have looked to the other cited provisions of the Law to determine whether the private activity involves potential interactions or dealings with situations or parties that have relationships with the agency or agency programs that would result in impairment or present a potential for violation or appearance issues under the other conflict provisions.” It goes on to state that “... our concern in these situations has resulted in barring such activities where there is an overlap in the populations to be served by the private work and the State duties. While advising in some cases that real estate activities are not absolutely prohibited ... we have said that these activities may be barred where they would necessarily bring the individual into contact with individuals or companies that would be interacting with the agency or agency program ... or where the prestige of the person’s State position would be an unavoidable factor in the private undertaking ...”.

It concludes that "...the Requestor's duties as Deputy would appear to entail his personal involvement with local officials and others interested in development activities, it is therefore our view that he should not, while he is a State official, be actively engaged in any real estate activity".

As the current City Council Commissioner who is acting as the liaison to the Planning and Zoning Commission is actively engaged in real estate matters as a broker, sales agent, and owner of multiple properties within the city, he is in a position of conflict or significant potential conflict when being the liaison to the Cambridge Planning and Zoning Commission where matters relating to real estate, real estate development, and zoning are routinely under consideration by the commission. He, therefore, should either resign as the liaison to the Planning and Zoning Commission or cease his active engagement in his real estate business within the City of Cambridge and place his city real estate holdings in a blind trust that would insulate him from any conflicts of interest.

In addition City Council should establish guidelines for elected officials and city staff who are called upon to be liaisons with City Commissions and Boards or who serve in their official capacity as a member of any city board or commission or serve on any community board that may do business with the city. Said guidance should provide clear direction to elected officials and city staff as to their roles as liaisons and/or board members in order to avoid conflicts of interest or apparent conflicts of interest.

THE COMMISSION REQUESTS THE CLERK OF THE CITY OF CAMBRIDGE TO PLACE THIS OPINION ON THE WEBSITE OF THE CITY OF CAMBRIDGE AND MAKE COPIES AVAILABLE TO THE PUBLIC WHEN REQUESTED.



STEPHEN W. RIDEOUT, CHAIR
ON BEHALF OF THE COMMISSION

Date: August 15, 2013