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BALTIMORE CITY BOARD OF ETHICS

Baltimore City Board of Ethics
Ethics Opinion 21-003
(April 1, 2021)

A member of the Baltimore City Council (“Councilmember”) has asked the Ethics Board for an advisory opinion on the application of the Baltimore City Public Ethics Law’s recusal requirements to their legislative duties that could affect an entity with which they are employed part time (“Employer”). As explained more fully below, we advise that as long as the Councilmember is employed by the Employer, they should refrain from participating in any legislative matter to which the Employer is a party.

Background

The Councilmember is employed part time by the Employer. The Councilmember has informed us that their duties for the Employer have been scaled back since they were sworn in as a Councilmember, and that they intend to resign from their secondary employment at some point in the near future. There are instances in which the City Council acts on legislative matters that involve the Employer.

Analysis

The Ethics Law, in relevant part, requires public servants—including City Council members—to disqualify themselves from a matter if they or a “disqualifying relative”¹ are employed by a “business entity” that is a party to the matter. § 6-6(b)(3)(ii).² Applying this provision to a particular scenario requires us to determine whether the entity in question constitutes a “business entity” and whether the entity is a “party to” a matter.³

First, the term “business entity” means “any person engaged in business or other organized activity, whether for profit or not-for-profit and regardless of form.” § 2-4. In turn, the definition of “person” includes “a partnership, firm, association, corporation, or other entity of any kind” and “a governmental entity or an instrumentality or unit of a governmental entity.” § 2-22. Accordingly, the Employer would be considered a “business entity” under this general definition.

¹ “Disqualifying relative” refers to a public servant’s spouse, parent, child, or sibling. § 6-1(b).

² Unless otherwise indicated, references are to the Ethics Law, contained in Article 8 of the City Code.

³ See sections 6-6 through 6-9 of the Ethics Law for a complete list of the interests and affiliations that would require a public servant to refrain from participating in a matter, as well as exceptions to those requirements.

Although the general definition of “business entity” is limited in the context of the recusal provision in section 6-6 to exclude “Baltimore City or any instrumentality, unit, or agency of Baltimore City,” that exclusion does not encompass the Employer.⁴

Second, what it means to be a “party to a matter” may not always be straightforward, and requires a case-by-case analysis. The State Ethics Commission—whose advisory opinions are persuasive when interpreting the City’s similar Ethics Law—has opined that an entity is involved as a “party” in a matter when that entity is identified as a party, has “some specified and clearly defined role” in the matter, or is “likely to be impacted by the [matter] in the usual legal sense of that term.” Maryland State Ethics Commission, Opinion No. 80-17 (Aug. 7, 1980). Clearly, the Employer would be considered a party to City Council legislative activity that directly and uniquely impacts the Employer.

Accordingly, unless an exception applies, the plain language of section 6-6(b)(3)(ii) of the Ethics Law would require the Councilmember to be disqualified from working or voting on any bill that directly impacts the Employer because they are employed by that entity. It is unlikely that any of the Ethics Law’s current exceptions would allow the Councilmember to work or vote on a matter impacting the Employer notwithstanding the prohibition in section 6-6(b)(3)(ii). In relevant part, an official who would otherwise be disqualified from a matter may nonetheless participate in the matter if:

- (1) his or her disqualification would leave a board or other body with less than a quorum capable of acting;
- (2) the public servant is required by law to act; or
- (3) the public servant is the only individual authorized to act.

§ 6-8(a).⁵

None of these exceptions clearly apply to the situation here. The Councilmember’s disqualification likely would not leave the Council with less than a quorum capable of acting; the Councilmember is not required by law to cast a vote on any specific matter; and the Councilmember is not the only individual authorized to vote on any specific matter. Arguably, the Councilmember may be the sole individual authorized to cast a vote *on behalf of their constituents* when it comes to any legislative matter, but that does not mean the exception in section 6-8(a)(3) would permit them to cast a vote notwithstanding a conflict of interest. Such a broad interpretation of that exception would mean that a Council member would never be required to recuse themselves from a matter, regardless how great the conflict of interest. We reject that interpretation as inconsistent with the liberal construction required by section 2-35 “to accomplish

⁴ See Ethics Opinion 21-0002 for a discussion of section 6-6’s limitation of the term “business entity.”

⁵ An official who participates under any of these exceptions must, “[i]f acting as a member of a board or other body . . . publicly disclose to [their] board or other body the nature and circumstances of the conflict” before participating, and “as soon as possible after participating, file with the Ethics Board and [the official’s] appointing authority a written notice of the nature and circumstances of the conflict and participation.” § 6-8.

[the] purposes” of the Ethics Law, *i.e.*, guarding “against improper influence or even the appearance of improper influence” and “ensur[ing] public trust in the government.” § 1-2.

To be sure, every Council member has an important duty to represent his or her constituents in legislative matters, but that duty must be balanced with the safeguards against conflicts of interest established in the Ethics Law. We are aware that under the State Ethics Law, members of the Maryland General Assembly fall under special conflict of interest provisions that are tailored to legislators. *See* Md. Code Ann., General Provisions Article (“GP”), § 5-511 *et seq.* For example, a member of the General Assembly may participate in a legislative action notwithstanding a presumptive conflict of interest if they file with the Joint Committee on Legislative Ethics a sworn statement disclosing the conflict and attesting their impartiality. *See* GP §§ 5-512 through 5-513. Only conflicts that are “direct and personal” to the legislator, their family, or their employer require disqualification. GP § 5-513(a)(2)(i). Even then, the State Ethics Law explicitly permits a State legislator to vote on the annual operating budget bill and the annual capital budget bill in their entirety. GP § 5-513(a)(2)(ii).

However, unlike the State Ethics Law, the City Ethics Law does not contain any special provisions for City legislators. Instead, members of the City Council fall under the general conflict of interest provisions in section 6-6 that are applicable to all other City officials and employees. As discussed above, section 6-6(b)(3)(ii) requires the Councilmember to be recused from a matter to which the Employer is a party. Because the Employer is undoubtedly a party to a bill that directly and uniquely impacts the Employer, the plain language of the Ethics Law requires the Councilmember to be recused from working or voting on such a bill. This requirement would cease once the Councilmember resigns from the Employer. Nonetheless, in that scenario, the Councilmember may still wish to publicly disclose their recently-ended employment before acting on any such bill, for the sake of transparency.

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