

ADVISORY OPINION 90-1

By letter, the Ethics Commission was requested to render an opinion as to whether "an ethical problem exists when an elected member of the council of a municipal government, elected in a non-partisan election, is also a duly elected and simultaneously sitting member of a partisan (Democrat or Republican) Central Committee.

The Maryland Legislature in 1979 passed a Public Ethics Law, codified as Article 40A to the Maryland Annotated Code, with various amendments to it over the intervening years. The principal thrust of the State ethics law has to do with three areas of concern, namely, 1) Conflicts of Interest, 2) Financial Disclosure, and 3) Lobbying Disclosure. Subtitle 6 of the Ethics law required municipalities to enact similar provisions for its officials; this the City of College Park has done by way of enacting Chapter 19 of the City Code and also in enacting that portion of the City Code known as the "Implementation of Code of Ethics".

The principal business of a College Park council member has to do with enacting legislation (by way of ordinances) and implementation of that legislation is the responsibility of the City Administrator and his staff or Department directors and employees. The function of the City council persons is non-partisan in the sense that there is no requirement for affiliation with any of the state-wide or county-wide political parties. On the other hand, the business of a central committee member, as delineated in Article III Section 13 of the Constitution of Maryland and Subtitle 11 of Article 33 of the Annotated Code of Maryland, has to do with isolated instances of nominating candidates to fill vacancies in the position of State Delegate or State Senator and the more usual task of serving on the governing body of one's political party--a function predominantly devoted to partisan politics on a state-wide or county-wide basis.

"Conflicts of Interest", as that term is used both in the State Ethics law and in our City Code, has to do with financial interests. There is no inherent conflict of financial interests in one person serving simultaneously as a city council member and as a central committee member, although, theoretically, it may be possible to conceive of such a conflict of financial interest situation. If indeed an unforeseen, actual conflict arises, at that time the council member would be duty bound to disclose the conflict and decline to participate in deliberation on the matter.

On the issue of financial disclosures, the City Code requires filing with the City's Ethics Commission whenever an actual or potential conflict of interest arises. Inasmuch as there is no inherent conflict of (financial) interest between the two positions, the City Code requirement for disclosure should take care of the situation of an unforeseen conflict arising.

As to lobbying, the City Code requires a lobbying statement to be filed with the City by any lobbyist, which is not germane to the question posed herein in this opinion.

A tangential question has to do with whether or not simultaneously holding the two positions is permissible in the face of the proscription contained in Article 35 of the Maryland Declaration of Rights, which prohibits any one person from holding more than one office of profit at the same time. The cases construing that provision have made it clear that, since there is not compensation paid, as in this instance to a central committee member, it would not be a situation of holding more than one office of profit at the same time.

For all of the foregoing reasons, it is the opinion of the Ethics Commission that no ethical problem exists when an elected member of the council of a municipal government, elected in a non-partisan election, is also a duly elected and simultaneously sitting member of a partisan (Democrat or Republican) Central Committee.

Mary Armstrong, Member

Mary Hollomand, Member

Lou Stengard, Member

Robert Smaldore, Chairman