ADVISORY OPINION 95-1

I. Facts

By written correspondence, an inquisitor asks the Ethics Commission to provide an advisory opinion based on a hypothetical case. The inquisitor asks us whether a conflict of interest would exist if either the Mayor or a member of the College Park City Council was a private and opposing party in litigation against the City of College Park. More specifically, the inquisitor requests an opinion from us if in such a situation it would be a conflict for the mayor or a council member, who is also a private litigant against the City, to, a) participate in Council discussions and debates regarding the litigation, b) attend executive sessions involving the litigation, or c) participate in a vote on a matter regarding the litigation? The inquiry does not identify the type of litigation involved (e.g., public interest litigation or litigation for monetary gain, etc.) or contain a more specific set of facts, e.g., when the litigation began in conjunction with the official's term of duty, the nature of the litigation, etc.

II. Opinion

It is the opinion of the Ethics Commission that such actions would violate the provisions of the Ethics Code, particularly if the Mayor or a Councilperson attended executive sessions or voted on any matter concerning the litigation, while an opposing party. The Commission contends that for an elected City official to participate either in an executive session or in a vote on a matter concerning the litigation would likely violate the following strictures of the Ethics Code; § 38-11, ***Prohibition Against Conflicts of Interest***, § 38-13, ***Prohibition Against Abuse of Position,*** and § 38-14, ***Prohibition Against Disclosure of Confidential Information.*** In certain instances, it is also conceivable that such actions by an elected official may also violate § 38-15, ***Prohibition Against Unauthorized Use of City Property*** and § 38-16 ***Prohibition Against Discriminatory Practices.***

Undoubtedly the City Attorney may also have grave concerns about affording his or her client, the City, confidentiality and privilege if an adverse party were to attend the executive sessions which are designed to discuss strategy for the lawsuit. This is a

question, however, better left to the City Attorney.

For the same reason, the Commission believes it would be a violation of the Ethics Code for an elected city official to participate in a council debate on the "litigation" while he or she is a party to a lawsuit against the City. It is this Commission's position that elected officials should avoid not only actual conflicts of interest but should avoid even the appearance of such a conflict. However, the Commission believes that in certain limited instances, it may be appropriate for the elected official to participate in Council discussions on issues of public interest surrounding the litigation as distinguished from the litigation itself, e.g., is it in the public interest to have a 30 day rather than a same-day residency requirement to vote or is it in the public interest to zone a piece of property one way or as compared to another, etc.

Prior to participating, however, the Commission would expect an elected official first to make clear and full disclosure to the public that he or she is a private party in the litigation and that he or she has an interest in its outcome. Disclosure is a key component of the City's Ethics Laws or for any governance body. Once the disclosure is made the Commission believes that the public has a significant interest in ensuring the voice of its elected representatives. Not to allow an elected official to participate in this broad context would have the effect of disenfranchising hundreds of voters.

This is our opinion of the cursory facts offered. If an actual or a more specific factual situation were offered to the Ethics Commission, we would be eager to revisit our opinion at that time. The inquisitor's inquiry, however, raises important issues affecting public discourse and potential conflict of interests for elected officials. We appreciate the opportunity to respond to this inquiry.

The Ethics Commission

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