Ethics Commission - City of College Park
Advisory Opinion 96-1
July 9, 1996

By written correspondence, the inquisitor asked the Ethics Commission about recusing one's self from voting on an issue before the Board of Housing Hygiene when the inquisitor had testified before the Noise Board about the same issue. (The problem comes about because the Board of Housing Hygiene can review Noise Board decisions.) The inquisitor voluntarily recused him/herself in this case but was requesting guidance as to whether recusal was necessary in this case.

By unanimous agreement, the Ethics Commission feels that recusal was necessary in this case. By testifying before the Noise Board, the inquisitor had publicly biased him/herself with regards to the case when it reached the Board of Housing Hygiene. The opinion was expressed as "acting as judge and police" or "plaintiff and juror". Since the inquisitor had advanced their own private interests by testifying before the noise board, acting on the same issue when it came before the Board of Housing Hygiene would seem to be allowing this dual role.

The inquisitor then goes on to ask further questions about various similar situations. The questions are of sufficient general interest that they will be addressed below to provide guidance for others who may find themselves in similar situations.

The specific questions were

1. Would recusal have been necessary were one of the Board of Housing Hygiene members a former member of the fraternity or of another group appealing to the board?

2. Does a member of the Noise Board lose voting rights if he or she has been harassed by the incident of noise in question?

3. Do members of the Election Supervision Board have to refrain from exercising their right and duty to vote because they might at some future date have to rule on an election appeal?

4. If a member of one of these boards does recuse himself, does that person have the right to argue as a private citizen before the board in question?

Each of these questions will be addressed below.

Question 1. The person appointing a member to this or any other board should have some idea of the background of the person appointed. If appointed and approved by the city council, the person has been judged to be an asset to the city. Therefore unless the appointee has made any public statements about the case or has testified in the case, he/she should not have to recuse him/herself. The discussion centered on the idea that in

the best of all possible worlds, no one on any of the panels/boards would have any prior knowledge of anything brought before them. In a small town, where people tend to know a fair percentage of the other citizens, this cannot happen and to attempt to avoid such problems, many otherwise competent people would be unable to serve.

Question 2. The answer to question 2 follows some the same ideas of question 1. If a member of the board has personal knowledge of a situation or incident but has made no public statement regarding it, he/she should not have to recuse him/herself. Having knowledge of the situation may in fact help in resolution if the person has not publicly biased him/herself. The only requirement should be that the person have an open mind during the process.

Question 3. The board of elections, in general, deals with the election process and actions of candidates on that process, not with the candidates themselves. In addition, in voting, the member is exercising his/her private right of franchise, not representing any other entity. Therefore, there would be no conflict.

Question 4. Any member of any board/commission who has recused him/herself should always have the right to appear as a private citizen before that board. They should identify that they are in fact speaking as private citizens but they have every right to present their view in the same manner as any private citizen.

It is hoped that by providing this guidance, members of the various boards, committees and commissions of the city will be better able to carry out their work in a fair and equitable manner.