

QUEEN ANNE'S COUNTY ETHICS COMMISSION

Opinion in Complaint No. 10-02

This complaint was filed with this Commission under Section 8-10.G. of the Queen Anne's County Public Ethics Law (Ethics Law) and was received April 19, 2010. Complainant alleges that Respondent, a member of the County Planning Commission, violated "the County Public Ethics Law" when Respondent declined to self-recuse from any discussions or votes on certain sections of the Queenstown Community Plan. After considering the substance of the complaint in light of Section 8-10.G(3), Ethics Law, the Commission promptly acknowledged the complaint and notified Respondent of the complaint and of Respondent's rights to respond and to counsel. The Commission received Respondent's timely response on April 30, 2010.

Upon further review of the complaint, as well as the response, the Commission concludes that "the facts alleged do not indicate a violation of this chapter" and, accordingly, dismisses the complaint. *See* Section 8-10.G.(4)(a), Ethics Law.

I. Stated Legal Basis for Complaint and for Ethics Commission's Jurisdiction

Section 8-2, Ethics Law, provides: "This chapter [Chapter 8 of the Code of Queen Anne's County] may be cited as the Queen Anne's County Public Ethics Law." Section 8-2 established the "Queen Anne's County Ethics Commission," and the ordinance makes clear, through various references in Section 8-10 relating to this Commission's powers and duties, that the scope of this Commission's responsibilities is "this chapter". *See, e.g.*, Section 8-10.B., C., D., E., F., and G. As indicated at the outset, Complainant alleges that Respondent's declination of recusal violated "the County Public Ethics Law," and he asks this Commission to remedy the situation.

On its face, Complainant's recital to the County Public Ethics Laws could be construed as a reference to Chapter 8. Complainant, however, does not mention any provision of Chapter 8 and, instead, relies solely on various sections of Chapter 27, which is a chapter containing a comprehensive compendium of provisions relating to human relations. The sections relied upon by Complainant do address certain aspects of ethics – mostly applicable to employees but to some extent to others, as well. Respondent, though, is not among those others.

Section 27-10(e) of that chapter defines members of the county's boards and commissioners who are appointed by the County Commissioners as being in the "exempt service," and Section 27-11 specifically reads that, with certain exceptions not relevant here, Chapter 27 does not apply to the exempt service. In other words, the ethics provisions of Chapter 27 simply do not apply to Respondent. In any event, as noted earlier, the scope of this Commission's jurisdiction is Chapter 8.

Thus, Complainant's complaint, which relies upon various provisions of Chapter 27 for support, and his attempted invocation of this Commission as the vehicle to enforce those provisions, fail.

II. Analysis of Factual Allegations Under Chapter 8

This decision – that Chapter 8, and not Chapter 27, defines both the conflicts of interest that Respondent must avoid and the scope of this Commission's appropriate jurisdiction to determine ethical conflicts – does not fully resolve this matter. Section 8-10.G.(4)(a) authorizes this Commission at this stage of the complaint process to "[d]ismiss the complaint if deemed plainly frivolous or if the facts alleged do not indicate a violation of this chapter." (Emphasis added.) A reasonable inference would follow from this language that Complainant's legal arguments do not authoritatively limit the full extent of this Commission's analysis and that we must proceed to analyze the facts he alleges in the light of Chapter 8.

Construing this provision liberally so as to fully serve the purpose and spirit of the Ethics Law, we will move beyond Complainant's flawed reliance on Chapter 27 as the legal basis for invoking our jurisdiction and for asserting a conflict of interest. Before we may dismiss this complaint, we must consider whether Complainant's factual allegations against Respondent demonstrate a conflict of interest under Chapter 8.

A. Conflicts of Interest Under Chapter 8: The Law

Section 8-11, the portion of the Ethics Law that defines the conflicts of interest that are prohibited by this ordinance, is not a sweeping moral or ethical imperative to do "right" or to avoid "wrong," whatever those terms might mean in principle under certain circumstances. It does not purport to proscribe "bias" in the casual conversational lingo of personal preference – even one strongly held or publicly expressed.

For instance, an elected political leader is not disqualified from taking action on a public policy issue on the ground that the leader had pre-existing views on that issue that were fervently expressed during the preceding election campaign. Similarly, there is nothing in Section 8-11 that prohibits an appointed public official from participating in the process of deciding a public issue simply because that official holds or has expressed certain personal opinions on the matter. Indeed, just as in the case of an elected political leader who reasonably may be expected to take action in office consistent with publicly expressed views on public policy questions; appointing

authorities might well anticipate and even expect an appointed official to act in office consistent with earlier-stated personal views on certain issues.

The thrust of Section 8-11's conflict of interest provisions is on money. The section is concerned with a county official reaping financial or personal gain in some way from the performance of that official's county responsibilities. In specific ways, the ordinance seeks to remove an official from the horns of the dilemma posed when asked to make a decision or to perform in a manner for the good of the County when, at the same time, that official's financially related interests are implicated in that action or decision. By doing so, it assures the county's citizens that, when a public official makes a decision or otherwise acts in the capacity of a county official, the official is acting in the best public interests of the county, uncompromised by private financial interests.

For instance, Section 8-11.A.(1) addresses acting for the county in a matter that would "have a direct financial impact, as distinguished from the public generally, on them or a family member . . ." That is, money. Subsection (2) focuses on a covered person "[b]eing employed by or having a financial interest in an entity" that has a certain relationship with the County. Again, money. Subsection (3) addresses "[h]olding any other employment or contractual relationship" that might impair the covered person's performance of county duties. Subsection (4) proscribes an official from representing someone for a contingent fee or from lobbying for compensation before a county body. Subsection 5 bans acceptance of prohibited gifts. *See* Section 8-12. Subsection (6) restricts a former official in acting as a compensated representative of someone else within two years of leaving a county position.

Even subsection (7), the final provision in Section 8-11.A., which is somewhat more general in defining its target than the earlier subsections are, still has money interests at its core. That provision prohibits covered persons from "[i]ntentionally using the prestige of their office, or confidential information acquired in their official County position, for their own private gain or that of another. The performance of usual and customary constituent services without additional compensation is not prohibited under this section."

The "gain" that is addressed in this provision is not the gain that somebody inevitably enjoys from virtually every decision made by a County official. Officials take actions and make decisions; it is what they are expected to do. When an official takes an action or makes a decision, the official likely does so knowing that somebody will "gain" from it in some way. What Section 8-11.A.(7) strikes at is an official who corrupts the public trust by "intentionally using" [emphasis added] the public office or confidential information acquired through the official's county position for the purpose of accomplishing a private gain.

The second sentence persuasively helps to define the "own private gain or that of another" that is prohibited. It is part and parcel of some officials' duties to render "usual and customary constituent services without additional compensation," and, so, such services are specifically excepted from the broad language of the first sentence. [Emphasis added.] If additional compensation is provided to the official for these services, however, then the inference would arise that the official used the prestige of his or her office for "private gain".

In sum, we construe Section 8-11.A.(7), in a manner fully consistent with the clear reading of the first six subdivisions of the section, to prohibit a covered person from intentionally using the trust of a public position for the purpose of providing a private financial gain, or the like. This view of the provision does not encompass within it a public decision or action by a covered person that only consequently favors some element of the community. If it did, county government would be paralyzed.

B. Complainant's Allegations: "The Facts Alleged"

Complainant asserts that certain factors "more than suggest[] a bias" held by Respondent that precludes Respondent from participating on matters before the Planning Commission relevant to potential development of a particular plot of land. As the foregoing discussion indicates, Section 8-11.A. does not prohibit an official from performing a duty of office simply because the official has strong personal views on the matter. In this light, we will construe Complainant's assertion of Respondent's "bias" to be an allegation of prohibited financial gain or the like.

Complainant points to two indicia of bias that he contends is disqualifying: First, that Respondent is a resident of a subdivision that is "in close proximity" to the land in question; and second, that Respondent in other ways, too, "is personally impacted by decisions concerning [the land] far beyond that of the general public."

1. Respondent is in close proximity.

Complainant alleges that Respondent lives in a subdivision that is "in close proximity" to the land in question. Though he does not expressly assert it, he thereby implies that Respondent is in such close proximity that it gives rise to an impermissible financial bias against the potential land development. In support of this implied allegation, however, Complainant has provided us with no allegation of fact, nor is there any evidence apparent.

Resort to a county land map reflects that Respondent lives in a subdivision that might be deemed to be in some proximity to the land in question, but the lot on which Respondent's home is placed is nowhere close to that land. The land is neither contiguous to Respondent's property nor visible from it. Moreover, Complainant provides the Commission with no other facts upon which we might infer that the locus of Respondent's home is a basis for finding a disqualifying conflict of interest under Section 8-11.A.

Complainant points to several instances of Respondent's actions in writing letters, providing written testimony, and making personal appearances before various public bodies, in which Respondent has offered views on potential development of the land in question here. All actions were as a private citizen, before Respondent was appointed to the Planning Commission. While not entirely clear, Complainant's contention seems to be that this activity is evidence that Respondent's financial interests are implicated in the question of the potential development of the land in question.

The public record indicates, however, that such activity by Respondent has not been limited to this particular parcel of land. Respondent has actively exercised the right to participate in the public process to espouse strong views and argument on several other land-use projects and issues in the county. Complainant simply has offered no allegations of fact that would support an assertion that Respondent has a conflict of interest, as we have defined and discussed that concept above.

2. Personal impact on Respondent.

Complainant asserts that Respondent “is personally impacted by the decisions” relating to the land in question, “far beyond that of the general public.” He argues that Respondent cannot enter or exit the development in which Respondent lives without going through a particular major intersection that already carries substantial traffic and predictably would carry more if the land in question was developed.

That is a statement of fact, however, that carries with it no relevance to whether Respondent has a proscribed conflict of interest under Section 8-11.A. Moreover, everyone in Respondent’s development, everyone who daily travels the major highway that intersects with the road into that development, and most everyone who daily visits a major shopping center near that intersection, all confront, and would confront, precisely the same situation as Respondent.

III. Conclusion

After reviewing the complaint, as well as the response, we have determined that Complainant’s conclusory contentions against Respondent are unsupported by any allegations of fact that, if true, would be sufficient to demonstrate a violation of Section 8-11.A., Ethics Law. *See* Section 8-10.G.(4)(a). Accordingly, the complaint against Respondent is dismissed. *Id.*