

Frederick County Ethics Commission
Minutes for the Public Meeting of Wednesday, May 30, 2007

Present: G. Anthony Crook, Chairman
Andrew T. Jones, Commission Member
Karl W. Bickel, Commission Member
Ronald W. Peppe, Alternate Commission Member
Linda B. Thall, Senior Assistant County Attorney
John S. Mathias, County Attorney
Doug Browning, County Manager
Claire Kondig
Bonnie Bailey-Baker

The Frederick County Ethics Commission met at 7:00 p.m. on May 30, 2007, at the Office of the County Attorney on the 3rd floor of Winchester Hall, 12 East Church Street, Frederick, Maryland 21701.

MOTION: Mr. Bickel made a motion to open the meeting. Mr. Jones seconded the motion, which was approved unanimously.

Unfinished Business

Approval of the minutes – The Commission considered the minutes from its May 8, 2007, meeting.

MOTION: Mr. Jones made a motion to approve the minutes as revised before the meeting. Mr. Bickel seconded the motion, which was approved unanimously.

Decision to meet to perform an administrative function – The Commission discussed whether to suspend its public meeting to meet to perform an administrative function.

MOTION: Mr. Bickel moved to suspend the public meeting to allow the Commission to perform an administrative function. Mr. Jones seconded the motion, which was approved unanimously.

The Ethics Commission then suspended its meeting to meet for an administrative function purpose. Upon completion of that meeting, the public meeting resumed. Ms. Kondig and Ms. Bailey-Baker joined the meeting at that time, as did County Attorney John Mathias and County Manager Doug Browning.

New Business

Planning and Zoning Public Ethics Law – The Senior Assistant County Attorney provided an overview of the new law. Mr. Mathias and Mr. Browning provided more detailed

information about how the law would be implemented and interpreted and the respective roles of the Ethics Commission, the County Manager and the Ethics Compliance Administrator (ECA). The intent for electronic messages is to set up a special email box, to which there would be limited access. The members of the BOCC would forward their electronic messages to this special box. Voice mail messages could also be forwarded to the ECA so that there would be no need to provide a summary of the voice mail message. Mr. Jones agreed that summaries are not as useful as the entire message. Mr. Crook and Mr. Bickel agreed. It was also noted that voice mail messages can be attached to an email and forwarded in that manner.

The Senior Assistant County Attorney distributed two forms to replace the BOCC Ex Parte Communications Disclosure form that the Ethics Commission approved at its last meeting. The members of the Ethics Commission indicated that the forms (one form for written communications and the other form for oral communications) were acceptable.

The County Manager stated that he may have quarterly reports prepared. He is also considering creation of electronic case files to store the disclosures. This would remove the need to print copies of the disclosures for placement in print files. The goal is to do as much electronically as possible.

There was a discussion of what information would be contained in the reports prepared by the County Manager's Office. Most likely, the reports should contain sections for each of the five types of covered land use matters covered by the law. Within each of these sections, there would be a listing of each application. For each application, each Commissioner would be listed, along with the number of communications (by type of communication) disclosed by that Commissioner. The County Manager indicated that he would instruct the ECA to find out what reports other Counties with similar laws prepare. Mr. Bickel suggested that the County Manager first develop the report and then return to discuss the proposed form with the Ethics Commission.

The President of the League of Women Voters expressed concern about the administrative burden that this law places on local government. Ms. Kondig provided the Ethics Commission with a letter asking the Commission to be mindful of this burden in establishing requirements.

The County Manager and County Attorney discussed the expectations for compliance with the law. The Ethics Commission expressed its belief that steps towards voluntary compliance with the law should be encouraged. This would include allowing the ECA to follow up with individual Commissioners and give reminders to ensure that ex parte communications are disclosed promptly. The Ethics Commission would not require that all delays in reporting ex parte communications that fall outside of the deadline be reported to the Ethics Commission. The ECA would be allowed to give Commissioners an opportunity to correct failures to disclose ex parte communications within the allowed period of time without giving a notice of the failure to the Ethics Commission. The Ethics Commission members agreed that notice only needed to be forwarded to the Ethics Commission if the disclosure was not made within ten days of the mandated deadline.

In the event that the ECA's review of disclosed communications raises a concern about possible violation of the Ethics Ordinance, the Commission agreed that the ECA should alert the County Manager, who would in turn inform the Senior Assistant County Attorney who represents the Ethics Commission. Mr. Crook asked the County Manager to ensure that the ECA receives training on the Ethics and Lobbying Ordinances. This will help to ensure that the ECA will be able to spot potential violations of those Ordinances if they occur. The County Manager agreed to do so.

The County Attorney explained the "safe harbor" provision in the Public Ethics Law and the need for officials to be able to rely on guidance provided by the Ethics Commission. He suggested a process similar to the one used by the County in seeking opinions from the Maryland Attorney General's Office. An attorney in the County Attorney's Office would draft an opinion setting forth the Office's interpretation of the Law. The opinion would then be sent to the Ethics Commission, which would then determine whether it was in agreement with that interpretation. The Ethics Commission agreed with this approach.

It was agreed that the County Manager and the ECA would meet with the Ethics Commission again towards the end of July after the ECA position is permanently filled.

There was a discussion of the new Law as it pertains to contributions to members of the Board of County Commissioners. The Ethics Commission was advised that steps were being taken to identify persons and entities that qualify as "applicants" under the Law. A list of applicants will be made available to the Board of County Commissioners and perhaps the public.

Amendment of the Ethics Ordinance – Mr. Crook suggested that the Commission send a letter to the Board of County Commissioners recommending an amendment to the Ethics Ordinance. The amendment would be to the financial disclosure requirements and would require disclosure of interests held by close family members (as described in Section 1-7.1-4(A) as well as interests held by the official or employee. This would assist the Commission in spotting violations of the conflict of interest provisions contained in Section 1-7.1-4.

MOTION: Mr. Bickel moved to have a letter to the Board of County Commissioners prepared in accordance with the above discussion. Mr. Jones seconded the motion, which was approved unanimously.

Letter to the State Delegation – The Commission discussed sending a letter to the State Delegation regarding the Public Ethics Law. The letter would recommend limiting the need for disclosure of ex parte communications with members of the Board of County Commissioners to applicants and others with a direct financial interest in the application. The Commission members also asked that they be provided a copy of the original bill requested by the Board of County Commissioners so that they could determine the scope of the original bill. The reasons for the recommendation would be the administrative burden to comply with the current disclosure requirement and the belief that the current requirement could discourage communications by the public with public officials. The Commission would recommend reverting to the original proposal submitted by the Board of County Commissioners for this past legislative session.

MOTION: Mr. Bickel moved to have a letter prepared consistent with the above discussion. Mr. Jones seconded the motion, which was approved unanimously.

Request for an Advisory Opinion – The Commission received a request for an Advisory Opinion about the impact of the recent Lobbying Ordinance on a civil engineering and land surveying firm that does work in Frederick County. The Senior Assistant County Attorney described how the Ordinance would apply to the firm if it engaged in activities that would require the firm to register as a lobbyist and how the compensation would be determined if the firm was required to complete the Lobbying Activity Report.

MOTION: Mr. Jones moved to have the Commission issue an Advisory Opinion consistent with the Senior Assistant County Attorney's guidance. Mr. Bickel seconded the motion, which was approved unanimously.

Adjournment

MOTION: Mr. Bickel moved to adjourn the meeting. Mr. Jones seconded the motion, which was approved unanimously.

The Ethics Commission adjourned its meeting at 9:30 p.m.

/s/
Linda B. Thall, Senior Assistant County Attorney