



ETHICS COMMISSION
LOUISVILLE, KENTUCKY

GREG FISCHER
MAYOR

March 21, 2014

Hon. Jon L. Fleischaker
Dinsmore & Shohl
101 S 5th St #2500
Louisville, KY 40202

Re: Request for Advisory Opinion of Metro Ethics Commission dated January 7, 2014

Dear Mr. Fleischaker:

Thank you for your Requests for Opinion on behalf of Metro Council President King regarding the affirmative duties of Council Members when voting on zoning matters. While responses to such inquires are intended to guide Metro Officers in making ethical decisions, they also promote a dialogue between citizens and local government that highlights our common efforts to ensure conscientious and reliable government. As similar, unofficial inquiries have come to the Commission from current and potential Metro Officers, your client's inquiry is particularly timely and serves to focus this dialog, and we thank you for same.

Your client has asked if Council Members have an affirmative duty to discover and identify the real parties in interest in zoning matters that come before the Council before voting. You posit that a Councilmember's judgment cannot be impaired by a conflict of interest if he is unaware of the conflict, nor can he disclose a conflict if he is not aware of the conflict.

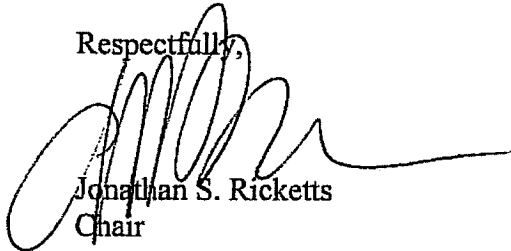
The Ordinance does not explicitly create such a burden; it simply prohibits official action in matters where the officer (or his family or his business, assuming a greater than 5% ownership interest) has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment. LMO 52-2010 §21.02(C). In this and other instances we have encountered, it seems some questions become: To what extent must a Metro Officer go to investigate conflicts? Or, what level of knowledge will or should be imputed to a Metro Officer for his personal and financial affairs? And, in the context of zoning votes, what type of interest would reasonably be expected to impair objectivity?

The Commission agrees that discussing these questions will develop a higher level of understanding that will be useful for our Metro Officers; however, we consider these questions to be more about policy than interpretation of the ordinance. The Commission is empowered to interpret the Ordinance as it applies to a specific set of facts, but setting policy is beyond the scope of the authority bestowed upon the Commission by the Council and Mayor. While the Commission may be employed at the Legislature's leisure in setting policy, the Commission must defer to the legislative body to determine if the Council intended to impose any such duty as necessary prerequisites to compliance with the Standards of Conduct.

The Commission is of the unanimous opinion that it should seek legislative guidance in order to answer your question, and, by copy of this correspondence to the Chairman of the Government Accountability and Ethics Committee of the Metro Council, will endeavor to work with the legislative branch to develop this area of the Ordinance to provide reliable guidance to your client and all other Metro Officers in the course of their government service.

If you have any questions, please call me at (502) 896-2303.

Respectfully,



Jonathan S. Ricketts
Chair

Cc: Chair, Government Accountability and Ethics Committee, and Council Clerk