

Baltimore County Ethics Commission Advisory Opinion 24-001

The Baltimore County Ethics Commission (the “**Commission**”) issues this Advisory Opinion in response to an inquiry made by a Baltimore County employee (the “**Employee**”) as to whether Employee would be permitted, under the Baltimore County Ethics Code (the “**Ethics Code**”), to serve in an unpaid capacity as a Member of the Advisory Council (the “**Advisory Council**”) of the Pikesville Armory Foundation (“the **Foundation**”). The letter that the Employee received from the Foundation inviting him/her to join the Advisory Council (the “**Invitation Letter**”) describes the Foundation as follows:

[The Foundation] is a nonprofit Maryland corporation that is managing the redevelopment of the historic Pikesville Armory, a campus of 14 acres and over 225,000 square feet in several buildings. Added to the National Register of Historic Places in 1985 as “a remarkable example of 20th Century landscape and architectural composition,” the campus has sat dormant for years. The Governor’s Commission on the Armory’s future led a robust community engagement process and in 2019 issued a unanimous vision: “The Pikesville Armory should be held in the public trust ...[as] a multi-use venue for recreation, arts, and other community programming, and as a spur to economic development.” In 2020, the Foundation was formed to make this vision a reality.

Public support from residents and elected officials for the project underscores the need for this community center and park in an underserved area of Baltimore County. Active partners in the project include the Veterans of the Pikesville Military Reservation, the 1000 Friends of Pikesville, the Greater Pikesville Recreation Council, the Greater Baltimore Chamber of Commerce, and the Boys & Girls Clubs of Metro Baltimore, as well as Baltimore County Departments of Planning and Rec & Parks, Baltimore County Public Schools, the State of Maryland, and the U.S. Department of Housing and Urban Development.

The Armory Foundation is working with the Seawall Company as its development partner. The redeveloped Armory campus will provide the community with athletic fields, cultural events, meeting and event venues, significant public art, walking paths, an accessible playground, gardens, and classrooms. This once-in-a-generation opportunity will be a catalyst for the revitalization of the Reisterstown Road corridor and become a destination for the entire region.

Id.

The Invitation Letter states that the purpose of the Advisory Council is to:

- Share [the Advisory Council member's] skills and expertise to advise the Board of Directors; and
- Offer advice that helps our organization grow and achieve our goals.

The Commission understands that the Council is not a corporate board of directors and will have no binding authority, nor incur any responsibility for the project. According to the Invitation Letter, the Advisory Council may be contacted by the Foundation on questions and welcomes its opinions and input. The Advisory Council will meet as a group twice yearly (or as needed), and meetings will typically be remote. The letter does not suggest that the Employee will sign a contract with the Foundation or the Advisory Council in order to be a member of the Advisory Council; nor has the Commission been informed by any person that any such contract would be entered into.

The Commission does not doubt that the Employee's perspective could be valuable to the Foundation, an entity which the County supports financially. Employee has informed the Commission that in the course of his/her employment with Baltimore County, he/she has become knowledgeable of the Reisterstown Road corridor community, which will be served by the Armory projects. However, that very experience triggers the need to be vigilant in avoiding a conflict or any violations of the Ethics Code.

Baltimore County Plan to Convey Pikesville Armory to the Foundation

On August 3, 2023, which was subsequent to the Employee submitting their request for an Advisory Opinion and the Commission's initial two meetings at which it discussed this request, but prior to the issuance of this Opinion, a Commission member noticed a news media item referring to Baltimore County having contracted to acquire the Pikesville Armory and to an apparent plan by Baltimore County to transfer ownership of the real property to the Foundation. The Ethics Commission member thereafter accessed, through a Google search, a Baltimore County press release entitled "*Baltimore County Acquires Pikesville Armory from State of Maryland to Support Future Redevelopment of Historic Site*," a copy of which is appended as Attachment 1 hereto (the "Press Release"). See <https://www.baltimorecountymd.gov/county-news/2023/08/02/baltimore-county-acquires-pikesville-armory-from-state-of-maryland-to-support-future-redevelopment-of-historic-site>, last accessed August 20, 2023.

The Press Release stated that Maryland Board of Public Works had voted to approve the transfer of ownership of the Pikesville Armory from the State of Maryland to Baltimore County, apparently either on or shortly before the August 3, 20223, date of the Press Release. The Press Release proceeded to state that "Baltimore County plans to transfer ultimate ownership of the site to the nonprofit Pikesville Armory Foundation to support ongoing efforts to reimagine the site into a community hub." *Id.* It also states that "[t]o date, over \$15 million in federal, state, and local funding – including \$3 million in [County Executive] Olszewski's FY24 budget – has been secured to support the future of the site."

It appears from the Press Release that the process of effecting these transfers will take place over some number of months; the Press Release concludes by stating:

In the coming months, Baltimore County will work in partnership with the State of Maryland and the nonprofit Pikesville Armory Foundation to finalize these transfers and to coordinate future redevelopment efforts.

Id.

Conclusion of the Commission

The Commission has unanimously concluded that the Employee is not barred by the Ethics Code from serving as an Advisory Board Member of the Foundation, subject to an important caveat, which is that he/she must not divulge any confidential information pertaining to Baltimore County while serving on the Advisory Council. The Commission's reasons are set forth below.

Scope of the Participation Prohibition.

In considering whether the Ethics Code precludes Employee from accepting the position on the Advisory Council, the Commission carefully reviewed Subtitle 3 of the Ethics Code ("Prohibited Conduct and Interests"). The Commission has concluded that inasmuch as Employee would not be paid by, and would not be an employee of, the Foundation, and does not, to the Commission's knowledge, have a financial interest in the Foundation, neither §7-1-302 ("Restrictions on Employment, Financial Interests, and Affiliations") nor §7-1-303 ("Employment by Public Official by Party to Contract"), which prohibit employment by outside entities in certain circumstances, apply here.

The Commission also considered whether Section 7-1-301 would require Employee to recuse himself/herself from certain decisions in his/her role as a Baltimore County employee. Section 7-1-301's applicability is not dependent upon the public official being an employee of the outside entity. Of note here is that §7-1-301 requires a public official to recuse himself or herself from participating in a "matter" if he or she has an interest in the matter or if he or she has a contract with an entity which is participating in a "matter." Specifically, it provides:

- (a) *Prohibitions.* Except as otherwise provided in subsection (c) of this section, a public official may not participate in a matter if:
 - (1) The public official or a qualified relative of the public official has an interest in the matter and the public official knows of the interest.
 - (2) Any of the following is party to the matter:

- (i) A business entity in which the public official has a direct financial interest of which the public official reasonably may be expected to know.
- (ii) A business entity, including a limited liability company or a limited liability partnership, of which any of the following is an officer, director, trustee, partner, or employee:
 - (1) The public official; or
 - (2) If known to the public official, a qualified relative of the public official.
- (iii) A business entity with which any of the following has applied for a position, is negotiating employment, or has arranged prospective employment”
 - (1) The public official; or
 - (2) If known to the public official, a qualified relative of the public official.
- (iv) If the contract reasonably could be expected to result in a conflict between the private interest and the official county duties of the public official, a business entity that is a party to a contract with:
 - (1) The public official; or
 - (2) If known to the public official, a qualified relative of the public official.
- (v) A business entity, either engaged in a transaction with the county or in which a direct financial interest is owned by another business entity if the public official:
 - (1) Has a direct financial interest in the other business entity; and
 - (2) Reasonably be expected to know of both financial interests; or
- (vi) A business entity that:

- (1) The public official knows is a creditor or obligee of the public official, or of a qualified relative of the public official, with respect to a thing of economic value; and
- (2) As a creditor or obligee, is in a position to affect directly and substantially the interest of the public official, or qualified relative.

Id.; *emph. added.*

The Commission has determined that §7-1-301(a)(1) does not apply here because based upon the information available to the Commission, we are unaware of Employee having an “interest” in the Foundation or in a matter that would be before the Advisory Board. *See* Ethics Code §7-1-101, defining “interest” to mean “

Nor do we believe that any of the subsections of §7-1-301(a)(2) are applicable here. Section 7-1-301(a)(2)(i) is not applicable because Employee, to our knowledge, has no financial interest in the Armory or the Foundation. Section 7-1-301(a)(2)(ii) is not applicable because it applies to persons serving as an officer, director, trustee, partner, or employee of an entity as opposed to a member of an Advisory Board or the like. Section 7-1-301(a)(2)(iii) is not applicable because Employee, to our knowledge, is not negotiating, and has not arranged, employment with the Foundation. Section 7-1-301(a)(2)(iv) is not applicable here because there is no contract between Employee and a business entity that could result in a conflict between the private “interest”, as defined as referenced above in §7-1-101 and the official county duties of the Employee. Section 7-1-301(a)(2)(v) is not applicable because, to the Commission’s knowledge, there is no involved business entity in which the Employee has a financial interest. Finally, Section 7-1-301(a)(2)(vi) is not applicable here because, to the Commission’s knowledge, the Foundation is not a business entity creditor of Employee.

Thus, we believe that §7-1-301(a) does not prohibit participation in County Matters involving the Foundation.

Confidentiality

With respect to confidentiality, the Commission first states that like all Baltimore County employees, Employee is subject to the requirement of the Ethics Code that he/she not disclose or use confidential information, *i.e.*, non-public information acquired by reason of his employment of Baltimore County, except in the course of performing his/her official duties for Baltimore County. Section 7-1-307 of the Ethics Code provides:

§7-1-307 – DISCLOSURE OF CONFIDENTIAL INFORMATION.

Except in the discharge of an official duty, a public official may not disclose or use confidential information acquired by reason of the public official's public position and not available to the public:

- (1) For personal economic benefit; or
- (2) For the economic benefit of another.

In considering this provision, it is important to first note that the Employee is within the definition of "public official" as that term is used in the Ethics Code. *See* Ethics Code §7-101(o)(definition of "public official" includes "an employee of the county)." Employee must ensure that he/she does not, in serving on as an Advisory Council Member, disclose to the Advisory Council, the Foundation, or any other person with whom he/she communicates while acting as an Advisory Board Member, any confidential information which was acquired by reason of his/her Baltimore County employment and which is not available to the public.

Similarly, the Employee should not participate on behalf of the Advisory Board or the Foundation on any issues, matters or decision-making concerning the County if doing so would be reasonably expected to require the Employee to disclose confidential information learned in the course of his/her Baltimore County employment.

Accordingly, although Employee may serve as an Advisory Council Member on the Advisory Council, he/she may not disclose non-public information that he learned by reason of his/her Baltimore County employment.

/s/ Cynthia Leppert
Cynthia Leppert, Chair

/s/ Lisa Tancredi
Lisa Tancredi, Commissioner

/s/ Laura Ray
Laura Ray, Commissioner

/s/ Laure Ruth
Laure Ruth, Commissioner