



## CHARLES COUNTY ETHICS COMMISSION

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### Advisory Opinion 21-01

DATE: August 12, 2021

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#### OPINION REQUESTED:

On May 27, 2021, a Charles County citizen sent the following request to the County Attorney's Office:

I am writing to you today as a Charles County citizen looking for some advice/guidance on a matter of great concern to the County and state of Maryland. I hope you are the right person.

For a long time, Marylanders have been very concerned about voting rights and our infamous gerrymandered voting districts in our state. I am very much looking forward to Maryland coming up with a fair redistricting plan in this upcoming year following the recently completed census. However, I have some concerns about the representatives who might be sent from Charles County.

I have been doing my research and recently found out that both the Democrat and Republican Central Committees select and send two representatives from their membership to the Redistricting Board in order for redistricting plans to be balanced and ideally, nonpartisan. In the interest of fairness and neutrality, I have looked up members of the Central Committees and see blatant conflicts of interest for the selecting members of the Charles County Democrat Central Committee.

[A spouse] of current a County Commissioner, is on the Democrat Central committee. If the Commissioner is seeking re-election or any higher elected office in the 2022 election, such as Delegate or State Senate, [the spouse] being able to select delegates to the redistricting committee seems to make them an "interested party". Would this be a case of him needing to recuse themselves?

Additionally, a [current] County Commissioner is on the central committee and who I assume is running for office in 2022. They are also an "interested party" and should recuse themselves as well, yes?

To be clear, there is no issue with either of these individuals serving on their Party's Central Committee. I just feel that just as a judge cannot hear a case because he or she knows a defendant and must recuse him/herself, this appears to be the same case for these two Central Committee members.

As the County Attorney, I am asking for your legal opinion on this matter. Thank you so much in advance for your time!

The County Attorney referred the matter to the Ethics Commission for review. An Ethics Commission meeting was held on Wednesday, June 30, 2021, with a quorum present, the question was considered, debated and legal advice was sought from the County Attorney. As a result of that meeting, the Commission issues the following Advisory Opinion on the question presented.

### **OPINION OF THE CHARLES COUNTY ETHICS COMMISSION:**

In its Statement of Policy and Purpose, the Board of County Commissioners enacted the Charles County Code of Ethics to ensure the following:

- A. The Board of County Commissioners of Charles County, Maryland, recognizing that our system of representative government is dependent in part upon the people maintaining the highest trust in their public officials and employees, finds and declares that the people have a right to be assured that the impartiality and independent judgment of public officials and employees will be maintained.
- B. It is evident that this confidence and trust is eroded when the conduct of the County's business is subject to improper influence and even the appearance of improper influence.
- C. For the purpose of guarding against improper influence, the Board of County Commissioners of Charles County enacts this Code of Ethics to require County elected officials, officials, employees, and individuals appointed to boards and commissions to disclose their financial affairs and to set minimum standards for the conduct of local government business.
- D. It is the intention of the Board of County Commissioners of Charles County that this chapter, except its provisions for criminal sanctions, be liberally construed to accomplish this purpose.

*See, Charles County Code, §170-2.*

Section 170-4 J. of the Code authorizes the Ethics Commission to issue Advisory Opinions, when requested and Section 170-4 K. authorizes the Commission to investigate and respond to a citizen complaint. While the Code does not specifically authorize issuing an advisory opinion to a citizen<sup>1</sup>, and while the email request does not specifically complain of a violation, the Commission believes that as the County will be entering the redistricting process this fall, issuing this advisory opinion in advance of that process can ensure that our officials maintain the high standards of integrity that our citizens have come to expect from them. Further, issuing this advisory opinion is timely, relates directly to a matter before the Board of County Commissioners, and can endeavor to ensure that no violation of the Ethics Code occurs.

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<sup>1</sup> The Commission notes that at least one of the County Commissioners subject to this opinion was made aware of the citizen request expressed their wish to have this question answered as well. As that Commissioner is "subject to this Chapter," it provides additional authority for the Ethics Commission to issue this Opinion.

The specific prohibitions and violations of the Ethics Code are found in §170-5. The subsection relevant to this particular inquiry and opinion is as follows:

A. Participation prohibitions.

1. Except as permitted by Commission regulation or opinion, an official or employee may not participate in:

a. Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which, to the knowledge of the official or employee, *the official or employee or a qualified relative of the official or employee has an interest.*

See, Charles County Code §170-5 A.1.a.

Every ten years, after the decennial census, the Board of County Commissioners are required to appoint a Redistricting Commission. See, Code §27-1 B. The redistricting commission is charged, in part, with drawing the district lines of each of the election districts throughout the County. One particular impact of the drawing of district lines is that it could affect whether a particular commissioner still resides in the district within which they were currently elected. Additionally, as the State considers mandating district only voting (as opposed to the county-wide voting system currently in place in Charles County), the composition, size and make-up of voting districts is of paramount importance to an elected official. As a result of these considerations, the Ethics Commission finds that each Board of County Commissioner who aspires to re-election or election to a higher office has an interest, recognized under this section of the Code, in the drawing of the Commissioner District lines by the Redistricting Board.

Furthermore, the Ethics Commission finds that the Code provisions applicable to the selection of the Redistricting Board are designed to ensure fairness and non-partisanship in its members. The Code provisions also provide for three separate bodies: the Board of County Commissioners, the Democratic Central Committee and the Republican Central Committee, to appoint members to the Board. See, Code §27-1 B. None of the individual groups has the ability to appoint a majority of the members to the Board, thus ensuring some balance in the Board's composition and presumably, its decision making.

The Ethics Commission finds that the presence of a County Commissioner or their spouse<sup>2</sup> on either of the Central Committees that are entitled by law to appoint members to the Redistricting Board, creates, at the very least, the appearance of a conflict, if not an actual conflict under the Code. Particularly, because allowing the Commissioner to take part in the selection process from two separate agencies, the Board of County Commissioners and a Central Committee, would, at least, create the appearance that the Commissioner directly, or indirectly through their spouse, would be able to select a majority of the Redistricting Board members and thereby ensure that they would get favorable treatment during the redistricting process.

Such an appearance, or actuality, would certainly erode public trust in the integrity of our County officials and County governmental institutions, would frustrate the non-partisan and

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<sup>2</sup> See, §170-2 Definitions – Immediate Family

impartiality intentions of section 27-1 B. of the Code, and would allow a Commissioner to use their office to act in their own personal self-interest.

Accordingly, the Ethics Commission believes that it would be a violation of the §170-5A.1.a. for a Commissioner to participate, personally or through their spouse, in a Central Committee's Redistricting Board selection process. Further, the Ethics Commission recommends that a Commissioner should take steps to prevent the appearance of this conflict from occurring. For example, a Commissioner could recuse themselves from any portion of a Central Committee meeting focusing on this issue.

APPROVED THIS 12<sup>th</sup> day of August, 2021.

ETHICS COMMISSION OF  
CHARLES COUNTY, MARYLAND

\_\_\_\_\_/s/\_\_\_\_\_  
Henry A. Collins, Jr., Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
Stephen P. Fitzgerald, Esq., Vice Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
Ralph Patterson, Commission Member