

CalvertCounty_FAV_HB834.pdf

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**CALVERT COUNTY
BOARD OF COUNTY COMMISSIONERS**

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Board of Commissioners
Mark C. Cox Sr.
Catherine M. Grasso
Earl F. Hance
Mike Hart
Todd Ireland

February 13, 2024

The Honorable Delegate Marc Korman, Chair
Environment and Transportation Committee
Room 241, House Office Building
Annapolis, Maryland 21401

Re: HB834 – Calvert County - Ethics - Consequences of Conflict of Interest Violations

Chair Korman, Vice Chair Boyce, and Committee Members:

The Board of County Commissioners for Calvert County writes in **SUPPORT** of **HB834** and requests a **FAVORABLE** Committee report. This Bill represents a citizen request presented to the Calvert County Delegation seeking additional judicial remedies for violation of a local ethics laws.

Presently, reviewing courts have the power to: (1) issue orders to cease and desist from the violation; (2) provide injunctive relief; (3) impose a fine of up to \$5,000/day; and (4) void most forms of action taken in violation. This legislation would provide the additional penalty of removal of a county elected official, and authorize Calvert County to enhance existing powers of the Courts enumerated above. We base our support of this legislation upon the preposition that public trust should never be jeopardized, and, therefore, all necessary and appropriate deterrents should be in place for the benefit all citizens of the State, including Calvert County.

Your thoughtful consideration of this request is sincerely appreciated. Should you have any questions or require further information, please do not hesitate to contact County Administrator Julian M. Willis at 410-535-1600, extension 2202 or County Attorney John Norris at 410-535-1600, extension 2566. Thank you for your kind consideration of our position regarding this important local Bill.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
CALVERT COUNTY, MARYLAND

Earl F. Hance, President

Catherine M. Grasso, Vice President

Mark C. Cox Sr.

Mike Hart

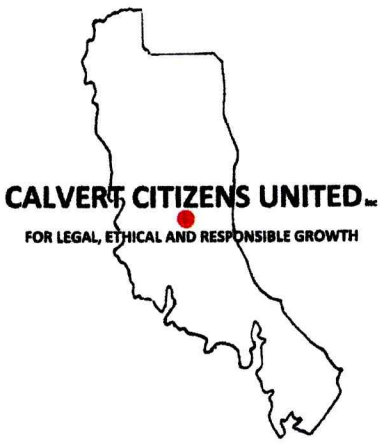
Todd Ireland

cc: Calvert County Delegation

CCU House Bill 834 Written Testimony.pdf

Uploaded by: Susan Dzurec

Position: FAV



CALVERT CITIZENS UNITED, INC.

P. O. BOX 1018
HUNTINGTOWN, MARYLAND 20639

February 20, 2024

Mr. Chairman, Madam Vice Chair and Members of the Committee,

Thank you for your consideration of CALVERT CITIZENS UNITED'S HOUSE BILL 834. This bill has the unanimous, bipartisan, support of the Southern Maryland Legislative Delegation and the Calvert County Commissioners.

As you consider the adoption of HB 834, I'd like to give you a clear understanding why its adoption is imperative to the citizens of Calvert County.

The following quotes are from the Calvert County Ethics Commission's document titled; Findings of Fact and Conclusions, page 8 and 9. Which is included in my supporting documents packet, sent to you by email.

During the 2040 Comprehensive Plan process, the expansion of the geographical boundaries of the county's Huntingtown Town Center was being considered. The Commissioners were given two options, A and B. Option B included the addition of two pieces of property owned by one County Commissioner, which he improperly voted for. His vote would have a direct or indirect financial impact on the Commissioner.

Following the Ethics Commission's investigation the Commission enclosed their Findings of Fact and Conclusion document in the Letter of Censure and Cease and Desist which was sent to the Commissioner, December 15, 2020.

The Findings of Fact Section III Conclusion states:

"Having found that Commissioner McConkey violated the Ethics Code as alleged, the Ethics Commission adopts the strongest course of action within its authority by issuing a Letter of Censure and ordering Commissioner McConkey to cease and desist from any further violations of Section 41-13.

The Ethics Commission issues the Letter of Censure, rather than a milder Letter of Reprimand, in light of the apparent premeditated nature of the violation. Commissioner McConkey's vote did not occur in a vacuum; instead, he participated only after his previous abstention caused Option B to fail, and despite significant public interest and criticism that his participation would violate the County's conflict of interest rules.

At no point did Commissioner McConkey seek the Ethics Commission's guidance or approval regarding his vote. Instead, he requested a nonbinding opinion letter from the County Attorney, which Commissioner McConkey voluntarily produced to the Ethics Commission in advance of the October 14 hearing. That letter, dated one day prior to his August 6 vote to adopt Option B, makes clear that Commissioner McConkey and the County Attorney anticipated that the Ethics Commission would find a conflict of interest in the matter, as it both identifies that possibility and sets forth his best arguments in Commissioner McConkey's defense.

In doing so, it appears that Commissioner McConkey determined to "paper up" his vote in advance, so as to place himself in the best position possible to defend against any subsequent complaints or action by this body rather than make a good faith effort to comply with the law.

If the Ethics Code has any meaning, it must stop elected officials from voting on matters in which they have a conflict of interest. The vote for Option B might have been the right choice from a policy perspective; it might not have been. We take no position in that regard. Our concern is that Commissioner McConkey **had a conflict of interest, knew about that conflict of interest, and voted anyway.** On that, our position is clear: Commissioner McConkey violated the Ethics Code by participating in that vote."

It should be noted that the Maryland Court of Special Appeals upheld the ruling of the Ethics Commission, in that Commissioner McConkey committed a "textbook Conflict of Interest" and The Maryland Supreme Court denied and dismissed Commissioner McConkey's attempt to overturn the lower court's ruling.

Clearly the threat of being censured was not enough to deter Commissioner McConkey from voting on his own property. What's worse is that in his attempt to dodge the consequences of his actions, the Commissioner made a conscious effort to destroy the personal and professional reputation of the Chair of the Ethics Commission to achieve his goal of self-enrichment.

Therein lies the need for House Bill 834.

Thank you again for this opportunity to testify before you and we respectfully ask that you support the citizens of Calvert County by endorsing House Bill 834

Susan Dzurec
Vice President,
Calvert Citizens United, Inc.

Dzurec_Additional_INFO_HB_834

Uploaded by: Susan Dzurec

Position: FAV

Circuit Court for Calvert County
Case No. C-04-CV-20-000400

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0954

September Term, 2021

IN THE MATTER OF
KELLY MCCONKEY

Berger,
Arthur,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: August 17, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In an administrative proceeding concerning his alleged violations of the Calvert County Ethics Code, Kelly McConkey, a Calvert County Commissioner, moved to recuse one of the decision-makers. The administrative agency determined that the decision-maker was not required to recuse herself, and it proceeded to find that the Commissioner had violated the Calvert County Ethics Code.

Commissioner McConkey sought judicial review in the Circuit Court for Calvert County, which reversed the agency's conclusion that the decision-maker was not required to recuse herself. The agency appealed.

For the reasons stated herein, we shall reverse the judgment of the circuit court and reinstate the agency's decision.

FACTUAL AND PROCEDURAL BACKGROUND

A. THE ADOPTION OF THE 2040 COMPREHENSIVE PLAN

In 2019, the Board of County Commissioners of Calvert County was considering the County's 2040 Comprehensive Plan. The proposed plan contained two options regarding the potential expansion of the Huntington Town Center. Under Option A, the Town Center would expand to include Huntington High School. Under Option B, the Town Center would expand even farther and would include about one-fourth of a square mile of additional land. Commissioner McConkey owned real property in the area encompassed by Option B.

At a hearing on June 25, 2019, the Board of County Commissioners voted on a motion to adopt and incorporate Option B into the 2040 Comprehensive Plan.

Commissioner McConkey abstained. The remaining Commissioners were equally divided: two voted in favor, and two voted against. The motion failed.

At a hearing on August 5, 2019, the Board of County Commissioners considered Option B again. Commissioner McConkey voted in favor of it. The motion to adopt Option B passed by a 3-2 vote.

At the same hearing, on August 5, 2019, the Board of County Commissioners voted to adopt the Draft Comprehensive Plan, including Option B. Commissioner McConkey voted in favor of the Draft Comprehensive Plan. The motion to adopt the plan passed by a 3-2 vote.

B. THE ETHICS COMPLAINTS AGAINST COMMISSIONER MCCONKEY

By letter dated September 20, 2019, the Ethics Commission informed Commissioner McConkey that it had received several complaints regarding his vote on Option B. The letter stated that the Ethics Commission had completed its preliminary investigation and that he would have the chance to respond before the close of the investigation. The Commissioner received the letter on September 24, 2019.

C. THE CALVERT RECORDER ARTICLE

On September 25, 2019, The Calvert Recorder, a local newspaper, published an article titled, “Ethics Complaints Filed Against McConkey.”¹ The article quoted Jennifer Mazur, a member of the Ethics Commission, as stating:

¹ Although the article is not part of the record, it may be found at https://www.somdnews.com/recorder/news/local/ethics-complaints-filed-against-mcconkey/article_7acb9953-931f-58ff-8fd8-9367f874c2b6.html.

We have more advisory opinion requests and ethics complaints than we normally have. I cannot reveal the nature of the complaints.

The article added: “Mazur said they are still allegations until the ethics board has completed its investigations.”

In addition to quoting Ms. Mazur, the article quoted the complainants and their complaints, as well Commissioner McConkey himself.

D. COMMISSIONER MCCONKEY’S ETHICS COMPLAINT AGAINST MS. MAZUR

On October 4, 2019, Commissioner McConkey made a formal ethics complaint against Ms. Mazur because of her comments to The Calvert Recorder. The complaint requested that Ms. Mazur recuse herself from the investigation and asked that copies of the complaints against him be delivered to his counsel’s office by October 8, 2019.

E. COMMISSIONER MCCONKEY’S LAWSUIT AGAINST THE ETHICS COMMISSION

On October 10, 2019, the Commissioner filed a complaint for declaratory and injunctive relief against the Ethics Commission in the Circuit Court for Calvert County.² On November 5, 2019, the circuit court ordered the Ethics Commission to disclose to McConkey or his counsel in writing the identities of the complainants who filed the complaints against him.³

² *Kelly McConkey v. Calvert County Ethics Commission*, Case No. C-04-CV-19-000448.

³ Unless Commissioner McConkey had somehow exhausted his administrative remedies in the brief period of time before he sought relief in the circuit court, it is less than entirely clear how the circuit court had the power to act. *See, e.g., Renaissance Centro Columbia, LLC v. Broida*, 421 Md. 474 (2011). The Ethics Commission, however, did not appeal the ruling. Hence, it is not before us.

On February 20, 2020, the Commission sent two complaints to Commissioner McConkey. The Calvert Recorder article had already identified both complainants and quoted their complaints.

F. COMMISSIONER MCCONKEY’S LAWSUIT AGAINST MS. MAZUR AND CALVERT COUNTY

On the same day that it sent the complaints to Commissioner McConkey, he received notice that the Ethics Commission had scheduled a hearing on the complaints against him. Two weeks later, on March 4, 2020, the Commissioner filed a civil suit for damages against Ms. Mazur and Calvert County.

In brief summary, Commissioner McConkey’s complaint alleges that, by responding to the reporter’s questions as she did, Ms. Mazur, an employee of Calvert County, breached a statutory duty to conduct the Commission’s actions “in a confidential manner” (Calvert County Code § 41-12(H)(1)) and to refrain from disclosing “any information about the complaint and any proceedings involving it” until “a violation is determined.” *Id.* § 41-12(H)(2). The complaint does not explain how Ms. Mazur breached the statutory duty of confidentiality by responding to a reporter’s question and stating that the Commission has “more advisory opinion requests and ethics complaints than [it] normally ha[s],” by declining to “reveal the nature of the complaints,” and by cautioning that the complaints are “still allegations until the ethics board has completed its investigations.”⁴

⁴ In addition, the complaint tacitly assumes that these provisions of the Calvert County Code create a private right of action. *See, e.g., Aleti v. Metropolitan Baltimore LLC*, ___ Md. ___, 2022 WL 2977104, at *11-12 (July 28, 2022). The complaint also

Commissioner McConkey did not serve Ms. Mazur and Calvert County with the complaint until late May 2021, more than a year after he filed suit against them. He served Ms. Mazur and Calvert County only after the circuit court had issued a notice of contemplated dismissal under Maryland Rule 2-507(b).

G. COMMISSIONER MCCONKEY’S ATTEMPT TO ENJOIN THE ETHICS COMMISSION HEARING

Meanwhile, on March 9, 2020, five days after he filed the complaint, Commissioner McConkey moved for a temporary restraining order and for a preliminary and permanent injunction in the lawsuit that he had previously filed against the Ethics Commission in November 2019. In his motion, the Commissioner asked the court to enjoin the Ethics Commission from conducting a hearing on the ethics complaints against him. On August 20, 2020, the circuit court permitted the hearing to proceed, but purported to bar the Ethics Commission from hearing evidence about whether the approval of the 2040 Comprehensive Plan conferred any financial benefit on Commissioner McConkey.⁵

H. THE ETHICS COMMISSION HEARING

The hearing took place, remotely, on October 14, 2020. At the outset of the hearing, Ms. Mazur, the Chair, reported that she had received a copy of an email,

assumes that the statutory duty runs to anyone who might claim to have suffered injury as a result of a breach of the duty of confidentiality, and not merely to the public at large. *See, e.g., Muthukumarana v. Montgomery County*, 370 Md. 447, 486-87 (2002).

⁵ *See supra* note 3, regarding the doctrine of exhaustion of administrative remedies and the propriety of the circuit court’s ruling.

apparently from Commissioner's McConkey's attorney, about her "potential recusal." Ms. Mazur said that she would be present at the hearing, but would not conduct it, and that she would seek legal advice as to whether she could participate in the decision.

Commissioner McConkey, through counsel, objected to Ms. Mazur's participation and moved that she recuse herself because of his pending (but at that point still unserved) lawsuit against her. The Commissioner argued that Ms. Mazur had a conflict of interest because she had an incentive to rule against him in order to minimize his damages claim against her.

The Secretary of the Ethics Commission asked his counsel whether he saw any reason why Ms. Mazur should not participate. Counsel responded that Ms. Mazur could listen to the proceedings, pending his advice to her and the Commission about whether she should recuse herself.

Commissioner McConkey's counsel requested that the three Ethics Commission members disclose any ex parte communications they had had regarding the matter. Of the three, only Ms. Mazur had any communications to disclose. She disclosed that the complainants had asked her about the status of the case and that she had told them that the Commission was conducting an evidentiary hearing, which was not open to the public and which they could not attend. She denied disclosing any details other than that the hearing was being held.

After Ms. Mazur disclosed those communications, Commissioner McConkey renewed his request that she recuse herself. Counsel for the Ethics Commission responded that the fact of the hearing was a matter of public record as a result of the

lawsuit in which the Commissioner had attempted to enjoin the Commission from conducting the hearing.

The hearing proceeded. The sole witness was Commissioner McConkey. He testified, among other things, that he owned two properties in the area encompassed by Option B.

I. THE ETHICS COMMISSION’S DECISION

On December 15, 2020, the Ethics Commission issued a written decision. Ms. Mazur participated in the decision.

In its decision, the Commission reached two principal conclusions. First, the Commission concluded that Ms. Mazur was not required to recuse herself. Second, the Commission concluded that Commissioner McConkey had violated the statutory prohibitions against conflicts of interest by voting to adopt Option B and thus to expand the boundaries of the Huntingtown Town Center to include two properties that he owned. The Commission issued a letter of censure and ordered the Commissioner to cease and desist from violations of the Ethics Code.

On the subject of whether Ms. Mazur was required to recuse herself, the Commission began by observing that the County Ethics Code (Chapter 41 of the Calvert County Code) requires members of the Commission to recuse themselves from a matter “if a personal interest presents a conflict of interest or an appearance of a conflict of interest.” Calvert County Code § 41-9(H). “Thus,” the Commission reasoned, “a ‘personal interest,’ however defined, is insufficient; there must be a ‘conflict of interest’ or the ‘appearance of a conflict of interest’ for recusal to be required.”

The Commission referred to § 41-13 of the Calvert County Code to evaluate whether Ms. Mazur had a conflict of interest.⁶ According to the Commission, Ms. Mazur would have a conflict of interest if she “has a *financial* interest in the matter,” if a “Business Entity^[7] sufficiently related to her is a party to the matter,” or if her “participation would, to her knowledge, have a direct or indirect financial impact upon her, her ‘Qualified Relative,’^[8] or her or the Qualified Relative’s affiliated Business Entity.” (Emphasis in original.) The Commission stated that Commissioner McConkey had not alleged any such conflict.

Citing § 41-2 of the Calvert County Code, the Commission went on to state that an “apparent conflict of interest” means an “existing or anticipated situation or condition *that gives an indication of a conflict of interest* that is not or may not be a conflict of interest but can erode the confidence and trust of the people in the conduct of county business.” (Emphasis in original.) In the Commission’s view, there can be no “apparent conflict of interest” absent “some indication of a conflict of interest.” The Commission saw “no such indication.”

The Commission specifically addressed what Commissioner McConkey called Ms. Mazur’s “interview” with the newspaper, as well as the Commissioner’s lawsuit

⁶ Section 41-13 is quite lengthy. Consequently, that section, and the rest of the Calvert County Ethics Code, are reproduced in the appendix to this opinion.

⁷ “Business Entity” is defined in § 41-2 of the Calvert County Code, which is reproduced in the appendix to this opinion.

⁸ “Qualified Relative” is defined in § 41-2 of the Calvert County Code, which is reproduced in the appendix to this opinion.

against her. It rejected the contention that either the “interview” or the lawsuit gave rise to a conflict or an apparent conflict.

The Ethics Commission found that Commissioner McConkey “significantly misrepresents the nature and substance of Ms. Mazur’s communication” with the newspaper. Contrary to the Commissioner’s allegation, Ms. Mazur, the Ethics Commission found, did not “give an interview.” Instead, the Commission found that she “specifically *declined to comment* when contacted by the reporter.” (Emphasis in original.) In support of those findings, the Ethics Commission cited the newspaper article, which includes Ms. Mazur’s statement that she “cannot reveal the nature of the complaints” and her warning that the complaints “are still allegations until the ethics board has completed its investigations.”

At the hearing, Commissioner McConkey had cited the newspaper article as proof that Ms. Mazur had “confirmed” that the Ethics Commission “has commenced investigations with respect to the complaints” against him and that she had “revealed” “that the initial investigation had been concluded, and that it was moving forward to formal investigation.” The Ethics Commission found that “[t]he article states no such thing.”

The Ethics Commission proceeded to address Commissioner McConkey’s lawsuit against Ms. Mazur and Calvert County. It concluded that the lawsuit did not give Ms. Mazur a “financial interest” in the outcome of the ethics complaints against the Commissioner:

Ms. Mazur does not appear to have any financial interest in the outcome of the complaints against Commissioner McConkey regardless of the fact that he has brought a civil lawsuit, independent of these proceedings, in a different venue and alleging an entirely different cause of action.

The Ethics Commission also discussed Commissioner McConkey's request that Ms. Mazur recuse herself because of the *ex parte* communication in which she responded to the complainants' inquiries and confirmed that the Commission would conduct a hearing on October 14, 2020. In the Commission's view, the communication "did not give rise to any indication that she has a financial interest in the complaints against Commissioner McConkey, as would be required to show a 'conflict of interest.'" The Commission added that the Commissioner did not allege that the communications gave Ms. Mazur a financial interest in the complaints against him.

Citing its rules of procedure, the Commission noted that Ms. Mazur was permitted, but not required, to recuse herself if she "deem[ed] it necessary to eliminate the effect of a prohibited *Ex Parte* communication." In the Commission's view, however, it was "not clear that recusal [was] 'necessary to eliminate the effect'" of the communication.

Finally, the Commission observed that the fact of the hearing "was already a matter of public knowledge," as a result of the Commissioner's lawsuit to enjoin the hearing. "[T]he effect of Ms. Mazur's *ex parte* communication," the Ethics Commission found, "was to confirm information that was already made public in court proceedings brought by Commissioner McConkey." Ms. Mazur may have revealed the date of the

hearing, but that information, in the Commission’s view, was “of minimal additional effect.”

On the merits, the Ethics Commission concluded that the ethics complaints against Commissioner McConkey presented a textbook example of a conflict of interest.

Because the Commissioner owned two properties in the area covered by Option B, he had an interest in the adoption of Option B of which he reasonably may have been expected to know. Therefore, the Commissioner had a conflict of interest under § 41-13(A)(1)(a) of the Calvert County Code. Moreover, because the incorporation of those properties into a town center would enhance their value, the Commissioner’s participation in the adoption of Option B would, to his knowledge, have a direct or indirect financial impact on him as distinguished from the public generally, which constitutes a conflict of interest under § 41-13(A)(1)(c) of the Calvert County Code. The Commission rejected Commissioner McConkey’s defense that he was required by law to vote on the adoption of Option B. Therefore, the Commission concluded that he violated the Ethics Code.

The Commission imposed the strongest sanction – a cease and desist order and a letter of censure, rather than a letter of reprimand. The Commission did so because the Commissioner voted on Option B after he had initially abstained, and because he did not seek the Commission’s guidance or approval. The Commission found it significant that, one day before his vote to approve Option B, Commissioner McConkey had obtained a letter from the County Attorney, which anticipated that the Ethics Commission would find a conflict of interest and outlined a defense to that charge. “In doing so,” the Commission found, “it appears that Commissioner McConkey determined to ‘paper up’

his vote in advance, so as to place himself in the best position possible to defend against any subsequent complaints or action by this body, rather than make a good faith effort to comply with the law.”⁹

J. JUDICIAL REVIEW

Commissioner McConkey petitioned for judicial review in the Circuit Court for Calvert County. The circuit court reversed the Ethics Commission’s decision on the ground that Ms. Mazur had an apparent conflict of interest that required her to recuse herself. After observing that the Commission would lack a quorum in Ms. Mazur’s absence, the court declined to remand the case for further proceedings.

As he did before the Ethics Commission, Commissioner McConkey argued that Ms. Mazur had a conflict of interest in participating in his case because, he said, his damages claim against her would be greater if the Commission found in his favor but lower if the Commission found against him. The Commission responded that the Commissioner’s suit against Ms. Mazur was a “frivolous” “attempt to stymie” the proceedings against him.¹⁰

⁹ The County Attorney acknowledged that, under § 41-11 of the Calvert County Code, the Ethics Commission alone may issue advisory ethics opinions. The County Attorney also acknowledged that the Ethics Commission had previously opined that a Planning Commission member had violated the Calvert County Ethics Code by moving to adopt Town Center boundaries, presumably because the member owned property within the expanded boundaries.

¹⁰ At the time of the hearing before the circuit court, in March of 2021, Commissioner McConkey had yet to serve Ms. Mazur with the complaint that he had filed in March of the previous year.

Initially, the court framed the issue before it as a “question of law” – “whether the Commission erred in failing to determine that Jennifer Mazur had a conflict of interest or apparent conflict of interest when it determined that Ms. Mazur did not have a financial interest.” The court reasoned that under, § 41-13(A)(1)(a) of the Calvert County Code, Ms. Mazur could not participate in Commissioner McConkey’s case if she had “an interest in the matter” of which she “reasonably may be expected to know.” The court observed that, under § 41-2 of the Calvert County Code, an “interest” is defined as an “economic interest.” In its opinion, however, the Ethics Commission had discussed whether Ms. Mazur had a “financial interest,” not whether she had an economic interest. Therefore, the court concluded, the Ethics Commission erred, because it “did not apply the correct definition of ‘interest.’” The court did not inquire into whether Ms. Mazur had an “economic interest” in Commissioner McConkey’s case, such that she would have been required to recuse herself.

The court went on to explore whether Ms. Mazur had an apparent conflict of interest, which it viewed as a question of fact, on which a court typically must exhibit great deference to the agency. Based on its review of the record, the court characterized Ms. Mazur as “unsure” about whether she had a conflict, because she had stated that she was seeking legal advice as to whether she could participate. Because of her request for legal advice about whether she had a conflict, the court concluded that the Commission’s finding, that she had no apparent conflict, was ““unsupported by competent, material, and substantial evidence in light of the entire record as submitted.”” (Quoting *Spencer v. Maryland St. Bd. of Pharmacy*, 380 Md. 515, 529 (2004).) The court did not expound on

how a finding that something did not exist could be unsupported by the evidence (as opposed to contradicted by the evidence).

In the court’s view, Ms. Mazur’s request for legal advice indicated her belief, at the time of the hearing, that the request for recusal created an “*existing or anticipated situation or condition that gives an indication of a conflict of interest that is not or may not be a conflict of interest,*” the definition of an “apparent conflict of interest” in § 41-2 of the Calvert County Code. (Emphasis added by the circuit court.) Thus, the court concluded that Ms. Mazur was required to recuse herself because she had an apparent conflict. The court expressly declined to address whether Ms. Mazur had an actual conflict of interest.

Commissioner McConkey had argued that, if Ms. Mazur were required to recuse herself, the Ethics Commission would have lacked a quorum. The court agreed.

At the conclusion of its opinion, the court asserted that it had the discretion to order a remand. The court stated that it found “no compelling public interest” in a remand, apparently because the Ethics Commission would not have a quorum if Ms. Mazur were required to recuse herself. Accordingly, the court declined to remand the case to the Commission.

The Ethics Commission noted a timely appeal.

QUESTION PRESENTED

The Ethics Commission poses the following question for appellate review:

Whether the circuit court erred in overruling appellant agency’s factual finding and substituting its own finding that Jennifer Mazur’s recusal was required where the court failed to consider that McConkey had forced the

conditions under which the court found an apparent conflict of interest existed.

For the following reasons, we shall uphold the Ethics Board’s conclusion that Ms. Mazur did not have a conflict or apparent conflict of interest that prevented her from participating in the decision concerning Commissioner McConkey. For that reason, we shall reverse the judgment of the circuit court.

STANDARD OF REVIEW

In reviewing the final decision of an administrative agency, this Court “looks through” the circuit court’s decision and “evaluates the decision of the agency.” *People’s Counsel for Baltimore Cty. v. Surina*, 400 Md. 662, 681 (2007); see *Bd. of Trs. for Fire & Police Emps.’ Ret. Sys. v. Mitchell*, 145 Md. App. 1, 8 (2002) (stating that “[o]ur role” in reviewing an administrative decision “is precisely the same as that of the circuit court”). In other words, this Court reviews the decision of the agency itself, and not the decision of the circuit court. *Mitchell v. Maryland Motor Vehicle Admin.*, 225 Md. App. 529, 543 (2015) (quoting *Howard Cty. Dep’t of Soc. Servs. v. Linda J.*, 161 Md. App. 402, 407 (2005)).

The agency’s decision is “‘presumed valid.’” *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 68 (1999) (quoting *CBS Inc. v. Comptroller*, 319 Md. 687, 698 (1990)). This Court’s review of the agency’s decision is “‘limited to determining if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.’” *Id.* at 67-68 (quoting *United Parcel*

Serv., Inc. v. People’s Counsel for Balt. Cty., 336 Md. 569, 577 (1994)). ““We review purely legal decisions *de novo*.”” *Mayor & Council of Rockville v. Pumphrey*, 218 Md. App. 160, 194 (2014) (quoting *People’s Ins. Counsel Div. v. State Farm Fire & Cas. Ins. Co.*, 214 Md. App. 438, 449 (2013)).

DISCUSSION

The parties’ briefs and arguments reflect some uncertainty about whether the issue on appeal involves a question of law, a question of fact, or a “mixed question of fact and law.” In our judgment, the facts before us are essentially undisputed. The sole question is whether the Ethics Commission committed legal error in the decision that it reached on the basis of those undisputed facts. The Commission did not err.

Commissioner McConkey argues that Ms. Mazur had a conflict of interest because she had an economic incentive to rule against him in order to minimize the damages that he could recover in the suit that he had filed against her. The Ethics Board responds that the Commissioner filed a frivolous lawsuit as a pretext to require Ms. Mazur to recuse herself, and thus to deprive the Commission of a quorum and to prevent the Commission from taking any action against him. We agree that Commissioner McConkey attempted to conjure the illusion of a conflict in order to derail the case concerning his ethical violations.

The Commissioner’s objective is apparent from his unsuccessful effort to enjoin the Ethics Board from proceeding against him, which coincided with his suit for damages against Ms. Mazur and Calvert County. His damages claim alleged that Ms. Mazur violated her statutory duties by disclosing confidential information about the ethics

complaints against him, but his conclusions do not follow from the underlying facts: Ms. Mazur expressly declined “to reveal the nature of the complaints” before the Commission, she warned that the complaints were only “allegations until the ethics board has completed its investigations,” and she said nothing about Commissioner McConkey or about anyone else. The Commissioner refrained from serving the complaint against Ms. Mazur (and Calvert County) for more than a year, which suggests that he was not thirsting for justice, but was using the complaint for an ulterior purpose – to interfere with the ethics case against him. Even if his complaint alleged actionable conduct, which it does not, Ms. Mazur has no economic stake in the outcome of the litigation: because the Commissioner alleges that she acted negligently in her capacity as a Calvert County employee, Calvert County is defending her against the allegations and will indemnify her against any judgment. To the extent that Commissioner McConkey alleges that Ms. Mazur acted maliciously and may not qualify for indemnification, his allegations have no factual support.¹¹

In short, the Commissioner’s lawsuit did not create anything resembling a conflict or an apparent conflict of interest. To the contrary, the lawsuit was a transparent effort to deprive the Ethics Commission of a quorum in order to prevent it from deciding the case

¹¹ And as previously noted, the complaint depends on the tacit assumptions that Commissioner McConkey has a private right of action under the Calvert County Ethics Code and that Ms. Mazur had a duty of confidentiality to him, and not to the public at large. *See supra* n. 4.

against the Commissioner.¹² It was another attempt to enjoin the proceedings in addition to Commissioner McConkey’s unsuccessful attempt to persuade a court to enjoin them. The Ethics Commission correctly concluded that Commissioner McConkey’s lawsuit did not require Ms. Mazur to recuse herself.

In addition, the Commission correctly concluded that Ms. Mazur did not have a conflict of interest as a result of the ex parte communications in which she informed the complainants of the date of the hearing in Commissioner McConkey’s case. The communications did not give Ms. Mazur an “economic” “interest in the matter,” which is the basis for a conflict of interest under § 41-2 and § 41-13(A)(1)(a) of the Calvert County Code. Moreover, as the Commission observed, Ms. Mazur merely informed the complainants of the date when the hearing would occur. Because of Commissioner McConkey’s court filings and public court proceedings in the separate lawsuit in which he had tried to enjoin the hearing, it was already a matter of public record that a hearing would occur.

Finally, although we review the Ethics Commission’s decision and not the decision of the circuit court, we feel an obligation to explain why we disagree with the circuit court.

First, the circuit court concluded that the Commission applied the wrong standard when it asked whether Ms. Mazur had a “financial” interest, rather than an “economic”

¹² The Ethics Commission asserts that, at the time of the hearing in Commissioner McConkey’s case, only three of its five positions were filled. The Board of County Commissioners, on which Commissioner McConkey serves, has the responsibility to fill the positions on the Ethics Commission.

interest – the term employed in the governing statute. While it is clear that the Commission did not employ the correct statutory term, it is far less clear that the choice of adjectives made a difference to the outcome. The court did not conclude that Ms. Mazur had an “economic” interest that the Ethics Commission overlooked because it was mistakenly looking only for “financial” interests. In other words, the court did not discuss whether the Commission’s semantic error, if any, had any consequences.

Second, the circuit court surmised that because Ms. Mazur consulted with counsel about whether she could participate in the case, she subjectively believed that she might have an apparent conflict. The record, however, contains no evidence of Ms. Mazur’s subjective beliefs; she may well have consulted with counsel because that is what responsible public officials do when they are accused of having a conflict or apparent conflict. In any event, Ms. Mazur’s subjective beliefs have no bearing on the analysis of whether she had an apparent conflict. The statutory standard is objective: it asks whether there is an “existing or anticipated situation or condition that gives an indication of a conflict of interest that is not or may not be a conflict of interest.” Calvert County Code § 41-2. Finally, as a matter of policy, it is unsound to presume the existence of an apparent conflict of interest when an official does what she ought to do and consults with an attorney about whether she does or does not have an actual or apparent conflict of interest. Public officials should be encouraged to consult with counsel to ascertain their

ethical responsibilities; they should not be deterred from consulting with counsel out of a concern that they will be deemed to have had an apparent conflict.¹³

**JUDGMENT OF THE CIRCUIT FOR
CALVERT COUNTY REVERSED; CASE
REMANDED TO THAT COURT WITH
INSTRUCTIONS TO AFFIRM THE
DECISION OF THE CALVERT COUNTY
ETHICS COMMISSION; APPELLEE TO
PAY ALL COSTS.**

¹³ Under the circuit court's formulation, Commissioner McConkey would also have had an apparent conflict of interest in voting on Option B, as he sought a legal opinion from the County Attorney before the vote.

APPENDIX

Chapter 41. Ethics

Article I. General Provisions; Definitions

§ 41-1. Short title.

This chapter may be cited as the "Calvert County Ethics Code."

§ 41-2. Definitions.

For the Calvert County Ethics Code, the following definitions have the meanings indicated, except where the context clearly indicates otherwise:

APPARENT CONFLICT OF INTEREST

An existing or anticipated situation or condition that gives an indication of a conflict of interest that is not or may not be a conflict of interest but can erode the confidence and trust of the people in the conduct of county business.

[Added 11-25-2014 by Ord. No. 45-14]

APPOINTED OFFICIAL

Any individual appointed by the Board of County Commissioners to serve on a local County agency, board, commission or other entity of the County, including ad hoc committees, boards and commissions. "Appointed officials" shall include members of all agencies, boards and commissions established at state law but appointed by the County Commissioners for Calvert County unless and until the State Ethics Commission determines that the Maryland Public Ethics Law is applicable to those members.

BUSINESS ENTITY

Any corporation (including any parent, subsidiary, or affiliated corporation or business entity), general or limited partnership, limited liability partnership, limited liability limited partnership, sole proprietorship, LLC, joint venture, unincorporated association or firm, institution, trust, foundation, or other organization, whether or not operated for profit.

CANDIDATE

Any individual who has filed a certificate of candidacy to seek election to become an elected official.

COMMISSION

The Calvert County Ethics Commission.

COMPENSATION

Any money or thing of value, regardless of form, received or to be received by any individual covered by this chapter for service rendered. If lobbying is only a portion of a person's employment, "compensation" means a prorated amount based on the time devoted to lobbying compared to the time devoted to other employment duties.

COMPLAINANT

A person who files a complaint with the Commission alleging a violation of the County Ethics Code.

COUNTY

Calvert County.

DOING BUSINESS WITH

Having or negotiating a contract that involves the commitment (either in a single transaction or combination of transactions) of \$5,000 or more of funds controlled by Calvert County in a calendar year, being regulated by or otherwise subject to the authority of the County, being registered as lobbyist under § 41-16 of this chapter.

ELECTED OFFICIAL

Any individual who holds an elective office of Calvert County. It does not include the Sheriff, State's Attorney, Register of Wills, Clerk of the Court or Board of Education.

EMPLOYEE

An individual employed by Calvert County, employed by the Board of Library Trustees and those employed by selection by the Director of the Board of Library Trustees pursuant to Maryland Annotated Code, Education Article, § 23-406, as amended from time to time. An "employee" shall not include an elected or appointed official and employees or officials of an executive agency of the State of Maryland. [Amended 11-25-2014 by Ord. No. 45-14]

FINANCIAL INTEREST

Ownership by an elected official, appointed official or employee, or the immediate family member of an elected official, appointed official or employee, of any interest as the result of which:

- A. The owner has received, within the past three years, or is presently receiving, or in the future is entitled to receive, more than \$1,000 per year; or
- B. Ownership, or ownership of the securities of any kind representing or convertible into ownership, of more than 3% of a business entity.

GIFT

The transfer of anything of economic value, regardless of form, without adequate and lawful consideration. "Gift" does not include the solicitation, acceptance, receipt, or regulation of political campaign contributions regulated in accordance with:

- A. The Election Law Article of the Annotated Code of Maryland; or
- B. Any other state or local law regulating the conduct of elections or the receipt of political campaign contributions.

IMMEDIATE FAMILY MEMBER

A spouse and dependent children. This term is used in § 41-15, Financial disclosure.

INTEREST

Any economic interest, either legal or equitable, whether or not subject to an encumbrance or a condition, owned or held, in whole or in part, jointly or severally, directly or indirectly. "Interest" does not include:

- A. An interest held in the capacity of agent, representative, custodian, fiduciary, personal representative or trustee, unless the holder has an equitable interest in the subject matter; or
- B. An interest in a time or demand deposit in a financial institution, a money market fund, publicly traded mutual fund, or retirement fund, including any County or state retirement or pension fund; or

C. An interest in an insurance or endowment policy or annuity contract under which an insurer promises to pay a fixed amount of money, whether in a lump sum or periodically for life or a specified period; or

D. A common trust fund or a trust fund which forms part of a pension or profit-sharing plan that:

- (1) Has more than 25 participants; and
- (2) Has been determined by the Internal Revenue Service to be either:
 - (a) A qualified trust under §§ 401 and 501 of the Internal Revenue Code of 1986, as amended; or
 - (b) A college savings plan.

LOBBYING

Communicating with any elected official, appointed official or employee, for the purpose of influencing that person in performance of his or her official duties, by a person required to register pursuant to the provisions of § 41-16, Lobbying disclosure, of this chapter. "Lobbying" does not include activities described in § 41-16D, Exemptions.

LOBBYIST

Any person lobbying, as defined above.

QUALIFIED RELATIVE

A. This term is used in § 41-13, Conflicts of interest, and applies to:

- (1) Employee's spouse, parent, child, grandparent, grandchild, brother, sister, spouse of brother or sister, or child's spouse;
- (2) Employee's spouse's parent, child, grandparent, grandchild, brother, or sister; or
- (3) Step relationships and legal adoptions are included in the above definitions.

B. For the purposes of § 41-13A(1)(e) of this chapter, the following are not to be considered conflicts of interest in the chain of supervision between an employee and a "qualified relative":

- (1) The employee and the qualified relative were hired by the Board of County Commissioners of Calvert County, Maryland, prior to October 1, 1989;
- (2) Any supervisory relationship between the employee and qualified relative upon the effective date of this code and any subsequent personnel action, including but not limited to promotions, demotions and transfers within that same chain of supervision; or
- (3) Any qualified relative of the County Administrator or a Commissioner of the Calvert County Board of County Commissioners.

[Amended 11-25-2014 by Ord. No. 45-14]

RESPONDENT

A person who is subject to the provisions of this chapter and the subject of an ethics investigation pursuant to this chapter.

SUBJECT TO THE AUTHORITY

Engaged in any activity that is, as distinguished from the public generally, regulated by, requires approval or supervision by, or otherwise subject to the regulatory, administrative, or other jurisdiction or authority of any department, board, commission, committee, office, agency or other unit of the County.

SUPERVISE

A person shall be deemed to supervise if he/she is capable of influencing employment, job assignment, promotion, performance evaluation and other personnel actions of another individual.

§ 41-3. Authority.

This chapter is adopted under the authority and in conformance with the provisions of Title 15, Subtitle 8, § 15-801 et seq., of the State Government Article of the Maryland Annotated Code, as amended.

§ 41-4. Statement of purpose.

A. The County, recognizing that our system of representative government is dependent in part upon the people having trust and confidence in their elected officials, appointed officials and employees, finds and declares that the people have a right to be assured that the impartiality and independent judgment of its elected officials, appointed officials and employees will be maintained.

B. This confidence and trust is eroded when the conduct of County business is subject to improper influence or even the appearance of improper influence.

C. The people have a right to be assured that the financial interests of elected officials, candidates, appointed officials and employees present no conflict with the public interest.

D. This chapter establishes ethical standards for elected officials, appointed officials and employees, financial disclosure and training requirements for certain elected officials, appointed officials and employees and disclosure requirements for candidates and lobbyists.

E. For the purpose of guarding against improper influence and setting minimum standards for the ethical conduct of public business, the Board of County Commissioners of Calvert County enacts this chapter.

F. It is the intention of the Board of County Commissioners that this chapter, except for its criminal sanctions, be liberally construed.

§ 41-5. Applicability.

A. The provisions of this chapter shall apply to the following:
[Amended 11-25-2014 by Ord. No. 45-14]

- (1) Elected officials;
- (2) Employees;
- (3) Appointed officials;
- (4) Calvert County Board of Library Trustees, employees of the Board of Library Trustees and employees selected by its Director pursuant to Maryland Annotated Code, Education Article, § 23-406, as amended from time to time; and

(5) Where specified, candidates.

B. Insofar as the following are subject to the Maryland Public Ethics Law, Maryland Annotated Code, State Government Article, § 15-101 et seq., as amended from time to time, or the County School Ethics enactments, the provisions of this chapter shall not apply to:

- (1) State's Attorney;
- (2) Clerk of the Circuit Court;
- (3) Judges of the Circuit Court;
- (4) Judges of the District Court;
- (5) Judges of the Orphans Court;
- (6) Register of Wills;
- (7) Sheriff;
- (8) County Health Department;
- (9) County Department of Social Services;
- (10) Members of the County School Board and all County school teachers; and
- (11) All employees of the above.

Article II. Ethics Commission

§ 41-6. Membership and terms.

A. Membership. The Commission shall consist of five members and one alternate member appointed by the County Commissioners, with the advice of the Ethics Commission, each of whom:

- (1) Is a resident of the County;
- (2) Is not a candidate or elected official;
- (3) Is not an employee or appointed official;
- (4) Is not a lobbyist.

B. The alternate member shall only serve as a participating member of the Commission when necessary to establish a quorum or when a member has recused himself or herself from participation in an issue before the Commission.

C. Terms. All members shall serve a term of three years. No more than two terms shall commence in any one year. The alternate shall also be appointed for a three-year term and shall sit when any member is unavailable for any reason. A member or alternate shall serve until a successor has been appointed.

D. Vacancies. If a vacancy occurs on the Commission, the Board of County Commissioners, with the advice of the Ethics Commission, shall appoint a qualified individual to serve the remainder of that term.

E. Removal. A member or alternate may not be removed from office except for good cause shown and upon notice and an opportunity to be heard by the County Commissioners. The Commission may initiate a recommendation for removal or comment on a recommendation.

§ 41-7. Meetings.

A. Public meeting. The Commission shall meet monthly. Commission meetings are open to the public in accordance with the Maryland Open Meetings Act, Maryland Annotated Code, State Government Article, § 10-501 et seq.

B. Executive session. This section does not prohibit the Commission from meeting and entering into executive sessions in accordance with the Maryland Open Meetings Act, Maryland Annotated Code, State Government Article, § 10-501 et seq. Executive sessions are not open to the public.

C. A quorum shall consist of three Commission members or two Commission members and an alternate member.

D. Voting. While the Commission strives to make decisions by consensus, where a vote is required to pass upon any matter before the Commission, a vote affirming the motion requires three or more votes in favor of the motion, regardless of the number of members seated at any single meeting.

E. Records.

(1) The Commission shall keep a formal record of its public proceedings.

(2) The Commission shall keep a formal record of its executive sessions, which shall remain confidential.

(3) Evidence and determinations shall be retained by the Commission for four years, then destroyed, except the Commission shall retain in its archives evidence and determinations of violations and litigation of matters that are still pending.

(4) Written reports of investigations shall be maintained as confidential records.

(5) All findings of violations of this chapter are public findings.

§ 41-8. Counsel.

The Commission shall be advised and represented by an attorney of its choice.

§ 41-9. Administration, powers and duties.

A. The Commission shall select its Chairman, Vice Chairman and Secretary annually by majority vote.

B. The Commission shall be the County's advisory authority responsible for interpreting this chapter and advising persons as to its application.

C. The Commission shall be responsible for considering and making a determination on any complaint filed regarding an alleged violation of this chapter. Allegations of violations and requests for advice may initially be made verbally to be followed by written submission, except where the

Commission may act on its own accord upon information presented to the Commission in an open meeting or during sworn testimony, whereupon a written submission is not required.

D. The Commission may adopt rules of procedure regarding its operations in conformance with this chapter.

E. The Commission shall be the custodian of all statements, registrations, reports and complaints submitted in accordance with this chapter.

F. The Commission shall be responsible for conducting informational, educational and training programs regarding the purpose and implementation of this chapter.

G. The Commission is required to certify to the State Ethics Commission on or before October 1 of each year that the County is in compliance with the state requirements for local elected officials.

H. A member shall recuse himself or herself from participation in a specific complaint or issue if a personal interest presents a conflict of interest or an appearance of a conflict of interest.

§ 41-10. Training.

Persons covered by this code shall be required to take ethics training, approved by the Commission, within one year of initial appointment or employment and every two years thereafter.

§ 41-11. Advisory opinions.

A. Any person may make a request to the Commission for an advisory opinion concerning application of this chapter.

B. The Commission shall respond within a reasonable time to the persons governed by this chapter, provided that the requestor furnishes the facts or they are reasonably available to the Commission.

C. Copies of the responses shall be made available to the public, subject to any applicable state or County law regarding access to public records. Information which may identify the person who is the subject of the opinion shall be deleted to the fullest extent possible from advisory opinions.

§ 41-12. Complaints.

A. Any person may file a written, signed complaint with the Commission alleging a violation of any of the provisions of this chapter. The complaint shall set forth sufficient facts to support the alleged violation.

B. The Commission may initiate an alleged ethics violation inquiry if four or more members of the Commission agree.

C. The Commission:

(1) Shall conduct an inquiry into the allegations of the complaint. As a result of the inquiry:

(a) May dismiss the complaint if it is deemed frivolous, lacks supporting evidence support, is repetitive, the facts alleged do not indicate a violation of this chapter or if the Commission believes that probable cause of a violation of this chapter does not exist.

(b) May appoint a member or members to conduct a formal investigation into the allegations of the complaint, which may include investigative interviews, and shall notify the respondent in writing of the allegations to be investigated. If, after receiving an investigative report, the Commission determines that there are insufficient facts upon which to base a determination of a violation, it may dismiss the complaint.

(2) May conduct hearings.

(a) The Commission may conduct hearings. Hearings are not open to the public.

(b) The respondent may be represented by counsel and may present evidence and witnesses.

(c) All hearings are administrative hearings and are not subject to the strict rules of evidence. Latitude is available to the Commission in order to determine the true circumstances of the case and arrive at appropriate conclusions. Testimony may be limited to reasonable duration as determined by the Commission in its discretion. Unnecessarily duplicative or repetitive evidence may be limited, as may too evidence the Commission determines irrelevant.

D. Where an investigation has been conducted by members of the Commission, information shall be presented to the Commission as a whole by members assigned aspects of an investigation.

E. Participation in proceedings and oaths. In carrying out its duties under this chapter, the Commission, after the issuance of a complaint, has the power to:

(1) Request the participation of persons by attending its proceedings and by submitting pertinent documents; and

(2) Administer oaths and affirmations.

F. The Commission shall consider the totality of evidence in determining whether a violation has occurred.

G. Based upon the evidence submitted to the Commission, the Commission has the authority to do one or more of the following:

(1) Dismiss the complaint;

(2) Issue a cease-and-desist order and/or a recommendation for corrective action;

(3) Issue a reprimand or censure;

(4) Recommend disciplinary action; and

(5) Make written findings of fact and conclusions based on the evidence. The Commission shall send its written findings to the complainant and the respondent. An ethics violation does not exist until a determination of a violation is made by the Commission.

H. Confidentiality.

(1) Except as otherwise provided herein, any action taken by the Commission in connection with a complaint shall be conducted by the Commission and its members in a confidential manner.

(2) Until a violation is determined, the Commission and its staff may not disclose to the public any information about the complaint and any proceedings involving it, including the identities of the complainant and the respondent.

(3) Notwithstanding the foregoing, the Commission may disclose information:

- (a) To inform the respondent of allegations to which a response is required;
- (b) As necessary to conduct an inquiry, a formal investigation, or a hearing;
- (c) If the respondent agrees in writing to the disclosure;
- (d) When recommending discipline or other action to the Board of County Commissioners;
- (e) When making a referral to a prosecuting authority; or
- (f) When the circumstances surrounding the alleged violation are already in the public domain and it serves the purpose of this chapter to disclose its determination.

I. Criminal activity. If the Commission, while considering a complaint, finds that there are reasonable grounds to believe that the respondent may have committed a criminal offense, the Commission shall promptly refer the matter to an appropriate prosecuting authority. Once referred, the Commission shall make available to the prosecuting authority evidence or information under its control and shall take no further action until the prosecuting authority has either:

- (1) Determined not to pursue criminal charges; or
- (2) Criminal charges have been pursued and all periods of appeal have lapsed.

J. Right of appeal. A person that is the subject of a decision, order or action by the Commission which has been made in connection with the enforcement of any provision of this chapter may seek judicial review of that decision in the Circuit Court of Calvert County in the manner prescribed by § 7-201 et seq. of the Maryland Rules of Procedure. No such appeal shall operate to stay any decision, order or action, except as ordered by the Circuit Court upon posting of a bond by the petitioner sufficient under the circumstances to protect the County and its citizens pursuant to Maryland Rules of Procedure §§ 7-205 and 1-401, which bond may not be waived.

Article III. Ethics Regulation

§ 41-13. Conflicts of interest.

A. Participation prohibitions.

- (1) Except as permitted by this chapter, elected officials, appointed officials and employees shall not participate in a matter if:
 - (a) The elected official, appointed official, employee or qualified relative has an interest in the matter of which the elected official, appointed official or employee reasonably may be expected to know.
 - (b) Any of the following is a party to the matter:

-
- [1] A business entity in which the elected official, appointed official, employee or qualified relative has a direct financial interest of which the elected official, appointed official or employee reasonably may be expected to know;
- [2] A business entity, of which any of the following is an officer, director, trustee, partner, or employee:
- [a] The elected official, appointed official or employee; or
 - [b] If known to the elected official, appointed official or employee, an qualified relative of the elected official, appointed official or employee;
- [3] A business entity with which any of the following has applied for a position, is negotiating employment, or has arranged prospective employment:
- [a] The elected official, appointed official or employee; or
 - [b] If known to the elected official, appointed official or employee, an qualified relative of the elected official, appointed official or employee;
- [4] If the contract reasonably could be expected to result in a conflict between the private interest and the official duties of the elected official, appointed official or employee, a business entity that is a party to a contract with:
- [a] The elected official, appointed official or employee; or
 - [b] If known to the elected official, appointed official or employee, an qualified relative of the elected official, appointed official or employee;
- [5] A business entity, either engaged in a transaction with Calvert County or subject to regulation by the elected official's, appointed official's or employee's governmental unit, in which a direct financial interest is owned by another business entity if the elected official, appointed official or employee:
- [a] Has a direct financial interest in the other business entity; and
 - [b] Reasonably may be expected to know of both financial interests; or
- [6] A business entity that:
- [a] The elected official, appointed official or employee knows is a creditor or obligee of the elected official, appointed official or employee, or of a qualified relative of the elected official, appointed official or employee, with respect to a thing of economic value; and
 - [b] As a creditor or obligee, is in a position to affect directly and substantially the interest of the elected official, appointed official or employee, or a qualified relative of the elected official, appointed official or employee.
- (c) Participation on behalf of the County would, to his/her knowledge, have a direct or indirect financial impact, as distinguished from the public generally, on the elected official, appointed official or employee or any qualified relative or business entity with which they are or any qualified relative is affiliated.
- (d) Participation in a contract that reasonably could be expected to result in a conflict between the private interests of the elected official, appointed official or employee and the

official duties of the elected official, appointed official or employee, a business entity that is a party to an existing contract with the elected official, appointed official or employee, or which, to the knowledge of the elected official, appointed official or employee, is a party to a contract with a qualified relative.

(e) Supervision of a qualified relative; subject to those exceptions set forth in the definition of a "qualified relative."

(2) All persons disqualified from participating under this subsection shall disclose the nature and circumstances of the conflict and may participate in the matter or act if:

(a) The disqualification leaves a body with less than a quorum capable of acting within a reasonable time;

(b) The disqualified elected official, appointed official or employee is required by law to act; or

(c) The disqualified elected official, appointed official or employee is the only person authorized to act.

(3) The prohibitions of Subsection **A(1)** of this section do not apply if application for an advisory opinion is made to the Commission pursuant to this chapter and participation is specifically allowed by written opinion of the Commission,

B. Employment and financial interest restrictions.

(1) Except as permitted by Commission opinion, elected officials, appointed officials and employees shall not:

(a) Be employed by a contractor or subcontractor of a business entity that is doing business with or is negotiating a contract with the County or is regulated by, in the case of an elected official or appointed official, the County, or, in the case of an employee, the agency with which the employee is affiliated; or

(b) Engage in a financial, business or real estate transaction that is regulated by, in the case of an elected official or appointed official, the County, or, in the case of an employee, the agency with which the employee is affiliated; or

(c) Hold any outside employment or business relationship that would impair their impartiality or independence of judgment.

(2) Employees seeking outside employment shall, at the time of obtaining outside employment:

(a) Follow the procedures established by the Director of Personnel to implement § 86-5-102J of the County Code covering work rules for obtaining supervisory approval of outside employment.

(b) If such supervisor finds a conflict of interest, then the employee may not engage in the outside employment.

Applicants, on commencing employment with the County, must follow the same procedure if they intend to continue existing outside employment.

(3) The provisions of Subsection **B(1)** do not apply automatically to:

(a) An elected official, appointed official or employee appointed to a regulatory or licensing authority pursuant to a statutory requirement that entities subject to the jurisdiction of the authority be represented in appointments to it; or

(b) Any appointed official in regard to a financial interest or employment held at the time of appointment, provided that it is publicly disclosed to and approved by the appointing authority and the Commission; or

(c) An elected official, appointed official or employee exercising an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter, in which any of his or her qualified relatives is a party.

C. Post-employment limitations and restrictions.

(1) An elected official, appointed official, department head, deputy department head or equivalent, as those positions may be defined or classified in Chapter 86 of the Public Local Laws of Calvert County, Maryland, may not act as a compensated representative of another in connection with a matter involving the County for one year after departing office or employment.

(2) Until one year after the elected official leaves office, a former elected official may not assist or represent another party for compensation in a matter that is the subject of legislative action.

(3) Following separation or departing office, voluntarily or otherwise, an elected official, appointed official or employee may not assist or represent another party for compensation in connection with any proceeding, application, case, contract or other specific matter involving the County or any agency thereof if that matter is one in which the former elected official, appointed official or employee significantly participated as an elected official, appointed official or employee through decision, approval or recommendation.

D. Contingent compensation. An elected official, appointed official or employee shall not represent or assist any party, for a contingent fee, before any County body.

E. Use of prestige of office. An elected official, appointed official or employee shall not use the prestige of his/her office or public position for his/her own private gain or that of another.

F. Disclosure of confidential information. Other than in the discharge of official duties, an elected official, appointed official or employee shall not use or disclose confidential information acquired in his/her official County position for his/her own private gain or that of another. This prohibition shall survive separation or departing office, voluntarily or otherwise.

G. Participation in procurement.

(1) An individual or a person that employs an individual who assists a County agency or unit in the drafting of specifications, as invitation for bids, or a request for proposals for a procurement agency may not submit a bid or proposal for that procurement, or assist or represent another person, directly or indirectly, who is submitting a bid or proposal for the procurement.

(2) Upon application for an exception or by regulation adopted by the Commission, the Commission may establish exemptions from the requirements of this section for providing descriptive literature, sole-source procurements and written comments solicited by the procuring agency.

H. Potential conflicts of interest.

(1) A potential conflict of interest shall exist if an elected official, appointed official, candidate or employee anticipates taking action or participates in any matter except in the exercise of ministerial duty which does not affect the disposition or decision of that matter, wherein the official's, candidate's or employee's conduct is or may be prohibited under this § **41-13**.

(2) Where a potential conflict of interest may exist, the elected official, appointed official, candidate or employee involved shall request in writing an advisory opinion from the Ethics Commission at least 20 days prior to the taking of said anticipated action or at the time when said elected official, appointed official, candidate or employee first obtains knowledge of said potential conflict, whichever shall first occur. To comply with the provisions of this Subsection **H**, the written request must provide all pertinent information for the Ethics Commission to provide an informed opinion.

I. Apparent conflicts of interest.

[Added 11-25-2014 by Ord. No. 45-14]

(1) An apparent conflict of interest or code violation, usually by improper influence or financial interests, should be referred to the Commission for an opinion.

(2) An apparent conflict of interest is not a violation of the Ethics Code but should be avoided when possible.

§ 41-14. Solicitation or acceptance of gifts.

A. An elected official, appointed official or employee shall not:

(1) Solicit any gift;

(2) Directly solicit or facilitate the solicitation of a gift, on behalf of another person, from a lobbyist;

(3) Knowingly accept a gift, directly or indirectly, from any person that the elected official, appointed official or employee knows or has reason to know:

(a) Is doing business or seeking to do business with the County;

(b) Has a financial interest that may be affected substantially and materially, in a manner distinguishable from the public generally, by the performance or nonperformance of the elected official's, appointed official's or employee's duties;

(c) Is engaged in an activity regulated or controlled by the County; or

(d) Is a lobbyist with respect to matters within the jurisdiction of the elected official, appointed official or employee.

B. Unless: (1) a gift of any of the following would tend to impair the impartiality and the independence of judgment of the elected official, appointed official or employee receiving it, or give that appearance; or (2) as to a gift of significant value, the gift would give the appearance of impairing the impartiality and independent judgment of the elected official, appointed official or employee; or (3) the elected official, appointed official or employee believes or has reason to believe that a gift of significant value is designed to impair the impartiality and independent judgment of the elected official, appointed official or employee, § **41-14A** does not apply to:

- (1) Infrequent meals and beverages of nominal value (\$20 or less) consumed in the presence of the donor;
- (2) Ceremonial gifts or awards which have insignificant monetary value;
- (3) Unsolicited gifts of nominal value or trivial items of informational value;
- (4) Reasonable expenses for food, travel, lodging and scheduled entertainment of the elected official, appointed official or employee for a meeting which is given in return for participation in a panel or speaking engagement at the meeting;
- (5) Gift of tickets for free admission extended to an elected official from the person sponsoring or conducting the event to attend charitable, cultural or political events if the purpose of the gift or admission is to enhance and promote the County as a courtesy or ceremony extended to the office (such gifts shall nonetheless be reported as required by Subsection **C** below);
- (6) A specific gift or class of gifts which the Commission exempts from this section after finding in writing that accepting the gift or class of gifts is not detrimental to the impartial conduct of the business of a County agency and the gift is purely personal and private in nature;
- (7) Gifts to the elected official, appointed official or employee from an immediate family member or relation by marriage; or
- (8) Honoraria, provided that the honorarium is limited to reasonable expenses for the elected official's, appointed official's or employee's meals, travel and lodging, and reasonable and verifiable expenses for care of a child or dependent adult, that are actually incurred. The honorarium may not be accepted if:
 - (a) The payer of the honorarium has an interest that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the elected official's, appointed official's or employee's official duties; or
 - (b) The offering of the honorarium is related in any way to the elected official's, appointed official's or employee's official position.

C. If gifts of over \$20 in value are received, all elected officials, appointed officials or employees must file a statement on an annual basis in the financial disclosure report with the Commission disclosing those gifts received from any person or entity. This statement must identify the donor of the gift and its approximate retail value at the time of receipt.

§ 41-15. Financial disclosure.

A. Elected officials and candidates. This section applies to all elected officials and candidates.

(1) Filing requirements.

(a) Except as provided in Subsection **A(2)** of this § **41-15**, all elected officials and candidates shall file the financial disclosure statement required under this section:

- [1] With the Commission;
- [2] On a form provided by the Commission;

-
- [3] Under oath or affirmation;
 - [4] Covering the calendar year immediately preceding the year of filing;
 - [5] By the deadline set forth in § **41-15A(1)(b)**; and
 - [6] Containing the information required by this section.

(b) Deadlines for filing statements.

[1] An elected official shall file a financial disclosure statement annually no later than March 31 of each year for the preceding calendar year.

[2] An individual who is appointed to fill a vacancy for which a financial disclosure statement is required and who has not already filed a financial disclosure statement shall file a statement for the preceding calendar year within 30 days after appointment.

[3] An individual who, other than by reason of death, leaves an office for which a statement is required shall file a statement within 60 days after leaving the office covering any period or periods for which the official has not filed such a statement, including all required information up to the date of departure.

[4] When any deadline for filing in this section falls on a Saturday, Sunday or legal holiday, the filing date shall be extended to the next calendar day not a Saturday, Sunday or legal holiday set forth in Chapter **86** of the Code of Public Local Laws of Calvert County, Maryland.

(c) The statement shall cover:

[1] The calendar year immediately preceding the year in which the individual left office, unless a statement covering that year has already been filed by the individual; and

[2] The portion of the current calendar year during which the individual held the office.

(2) Candidates.

(a) Except for an individual who has filed a financial disclosure statement under another provision of this section for the reporting period, a candidate shall file under a financial disclosure statement each year beginning with the year in which the certificate of candidacy is filed through the year of the election.

(b) A candidate shall file a statement required under this section:

[1] In the year the certificate of candidacy is filed, no later than the filing of the certificate of candidacy;

[2] In the year of the election, on or before the earlier of March 31 or the last day for the withdrawal of candidacy; and

[3] In all other years for which a statement is required, on or before March 31.

(c) A candidate:

[1] May file the statement required under § **41-15A(2)(b)[1]** of this chapter with the County Clerk or County Election Board with the certificate of candidacy or with the Commission prior to filing the certificate of candidacy; and

[2] Shall file the statements required under § **41-15A(2)(b)[2]** and **[3]** with the Commission.

(d) If a candidate fails to file a statement required by this section after written notice is provided by the County Clerk or County Election Board at least 20 days before the last day for the withdrawal of candidacy, the candidate is deemed to have withdrawn the candidacy.

(e) The County Clerk or County Election Board may not accept any certificate of candidacy unless a statement has been filed in proper form.

(f) Within 30 days of the receipt of a statement required under this section, the County Clerk or County Election Board shall forward the statement to the Commission or the office designated by the Commission.

(3) Contents of statement.

(a) Interests in real property.

[1] The statement shall include a schedule of each interest in real property wherever located, including each interest held in the name of a business entity.

[2] For each interest in real property, the schedule shall include:

a The nature of the property and the location by street address, mailing address, or legal description of the property;

b The nature and extent of the interest in the property, including any conditions and encumbrances on the interest;

c The date when, the manner in which, and the identity of the person from whom the interest was acquired;

d If the interest was acquired by purchase, the nature and amount of the consideration given in exchange for the interest;

e If the interest was acquired in any other manner, the fair market value of the interest at the time acquired;

f If any interest was transferred, in whole or in part, at any time during the applicable reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and the identity of the person to whom the interest was transferred; and

g The identity of any other person or entity with an interest in the property.

(b) Interests in corporations and partnerships

[1] A statement filed under this section shall include a schedule of all interests in any business entity regardless of whether the business entity does business with the County.

[2] For each interest reported under this subsection, the schedule shall include:

[a] The name and address of the principal office of the business entity;

[b] The nature and amount of the interest held, including any conditions and encumbrances on the interest;

[c] With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and, if known, the identity of the person or business entity to whom the interest was transferred; and

[d] With respect to any interest acquired during the reporting period:

[e] The date when, the manner in which, and the identity of the person or business entity from whom the interest was acquired; and

[f] The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

[3] As to an equity interest in a corporation, an individual may satisfy the requirement to report the amount of the interest held under Subsection **A(3)(b)[2]** of this section by reporting instead of a dollar amount:

[a] The number of shares held; and

[b] Unless the corporation's stock is publicly traded, the percentage of equity interest held; or

[4] For an equity interest in a business entity, the percentage of equity interest held.

(c) Interests in business entities doing business with the County.

[1] A statement filed under this section shall include a schedule of all interests in any business entity that does business with the County, other than interests reported under Subsection **A(3)(b)**.

[2] For each interest reported under this subsection, the schedule shall include:

[a] The name and address of the principal office of the business entity;

[b] The nature and amount of the interest held, including any conditions to and encumbrances on the interest;

[c] With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount or fair market value of the consideration received in exchange for

the interest, and, if known, the identity of the person or business entity to whom the interest was transferred; and

[d] With respect to any interest acquired during the reporting period:

[i] The date when, the manner in which, and the identity of the person or business entity from whom the interest was acquired; and

[ii] The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

(d) Gifts.

[1] A statement filed under this section shall include a schedule of each gift in excess of \$20 in value or a series of gifts with a cumulative value of \$100 or more received during the reporting period from or on behalf of, directly or indirectly, any one person or business entity who does business with or is regulated by or does business with the County.

[2] For each gift reported, the schedule shall include:

[a] A description of the nature and value of the gift; and

[b] The identity of the person or business entity from whom, or on behalf of whom, directly or indirectly, the gift was received.

[3] This subsection does not authorize any gift not otherwise allowed by law.

(e) Employment with or interests in entities doing business with County.

[1] A statement filed under this section shall include a schedule of all offices, directorships, and salaried employment by the individual or immediate family member of the individual held at any time during the reporting period with business entities doing business with the County.

[2] For each position reported under this subsection, the schedule shall include:

[a] The name and address of the principal office of the business entity;

[b] The title and nature of the office, directorship, or salaried employment held and the date it commenced;

[c] The name of each County agency with which the business entity is involved; and

[d] The nature of the business with the County.

(f) Indebtedness to entities doing business with the County.

[1] A statement filed under this section shall include a schedule of all liabilities, excluding retail credit accounts, to persons and business entities doing business with the County owed at any time during the reporting period:

[a] By the individual; or

[b] By an immediate family member of the individual if the individual was involved in the transaction giving rise to the liability.

[2] For each liability reported under this subsection, the schedule shall include:

[a] The identity of the person or business entity to whom the liability was owed and the date the liability was incurred;

[b] The amount of the liability owed as of the end of the reporting period;

[c] The terms of payment of the liability and the extent to which the principal amount of the liability was increased or reduced during the year; and

[d] The security given, if any, for the liability.

(g) A statement filed under this section shall include a schedule of the immediate family members of the individual employed by the County in any capacity at any time during the reporting period.

(h) Sources of earned income. Except that the statement need not include a listing of a minor child's employment or business entities of which the child is sole or partial owner, unless the place of employment or the business entity is subject to the regulation or authority of the agency that employs the individual, each statement filed under this section shall include a schedule listing the name and address of each:

[1] Place of salaried employment, including secondary employment, of the individual and the immediate family members of the individual at any time during the applicable period;

[2] Each business entity of which the individual or an immediate family member of the individual was a sole or partial owner and from which the individual or immediate family member of the individual received earned income, at any time during the reporting period.

(i) A statement filed under this section may also include a schedule of additional interests or information that the individual making the statement wishes to disclose.

(4) For the purposes of § **41-15A(3)(a)** through **(c)** of this chapter, the following interests are considered to be the interests of the individual making the statement:

(a) An interest held by an immediate family member of the individual, if the interest was, at any time during the reporting period, directly or indirectly controlled by the individual;

(b) An interest held by a business entity in which the individual held a thirty-percent or greater interest at any time during the reporting period; and

(c) An interest held by a trust or an estate in which, at any time during the reporting period:

[1] The individual held a reversionary interest or was a beneficiary; or

[2] If a revocable trust, the individual was a settlor.

B. Employees and appointed officials.

(1) Filing requirements.

(a) Except as provided at § **41-15C(1)** below, employees and appointed officials identified in § **41-5** shall file the financial disclosure statements required under this section:

- [1] With the Commission;
- [2] On a form provided by the Commission;
- [3] Under oath or affirmation;
- [4] Covering the calendar year immediately preceding the year of filing;
- [5] By the deadline set forth in § **41-15A(1)(b)**; and
- [6] Containing the information required by this § **41-15B**.

(b) If the official title of any of the agencies, boards, commissions or individuals covered by this § **41-15B** is changed, those persons fulfilling the same function shall be required to file financial disclosure statements as provided in this section.

(2) Deadlines for filing.

(a) An incumbent employee or appointed official shall file a financial disclosure statement annually no later than March 31 of each year for the preceding calendar year.

(b) An individual who is appointed to fill a vacancy in an office or position for which a financial disclosure statement is required and who has not already filed a financial disclosure statement shall file a statement for the preceding calendar year within 30 days after appointment or commencement of employment.

(c) An individual who, other than by reason of death, leaves an office for which a statement is required or is separated from employment shall file a statement within 60 days after leaving the office, covering any period or periods for which the employee or appointed official has not filed such a statement, including all required information up to the date of departure.

(d) An employee or appointed official covered by this chapter who leaves position or office for another County position or office similarly regulated by this chapter shall not be required to file a financial disclosure statement if the employee or appointed official has filed the currently required statement in the former position or office.

(e) When any deadline for filing in this section falls on a Saturday, Sunday or legal holiday, the filing date shall be extended to the next business day not being a Saturday, Sunday or legal holiday set forth in Chapter **86** of the Code of Public Local Laws of Calvert County, Maryland.

(3) Contents of statement.

(a) The statement shall include personal information such as:

- [1] Name;
- [2] Residence;

- [3] Position with the County or County agency, board or commission;
- [4] Relationship to other employees, appointed officials and elected officials;
- [5] Secondary employment;
- [6] Annual gift disclosure;
- [7] Business interests;
- [8] Interests in corporations or partnerships, any office, directorship or similar interest for the filer or an immediate family member of the filer;
- [9] Real estate investments and transfers (wherever located);
- [10] Fees received from third parties; and
- [11] Any interest or situations that might raise a conflict of interest, the appearance of a conflict of an interest or the potential for either.

(b) Appointed officials shall be required to disclose information specified in Subsection **B(3) (a)** above only with respect to those interests, gifts, compensated positions and liabilities that may present a conflict as provided by §§ **41-13** and **41-14** of this chapter.

(c) The Commission may revise the disclosure statement as necessary to require additional, less or different information.

C. Exemptions from financial disclosure requirements.

(1) The Commission may exempt employees and appointed officials or categories of employees and appointed officials from the financial disclosure requirement, unless the Commission determines that the employee or appointed official meets the following applicable criteria:

- (a) Is an elected County official or a candidate for elected office;
- (b) Is the principal executive directing a County department or division; or
- (c) Performs any of the following duties:

[1] The individual employee or appointed official, acting alone or as a member of a County department or division, has discretionary or decisionmaking authority or acts as a principal advisor to one with authority in making County policy or in exercising quasi-judicial, regulatory, licensing, inspecting or auditing functions and the individual employee's or appointed official's duties are not essentially administrative and ministerial; or

[2] Contractual employees who are employed full time for at least six months and who are identified as having decisionmaking authority, acting as a principal advisor to a decisionmaking authority, or the exercise of quasi-judicial, regulatory, licensing, inspecting or auditing functions is included; or

[3] The individual employee or appointed official is charged with decisionmaking authority or acts as a principal advisor to one with such authority in drafting specifications for negotiating or executing contracts which commit the County or any

of its departments, divisions or other units to expend in excess of \$1,000 for an individual contract. The \$1,000 per contract criterion also applies to corporate credit card purchases;

[4] The individual employee's or appointed official's position, due to its responsibilities, nature, expertise or placement in the County, involves some continuing likelihood of directly influencing or otherwise directly affecting the formation or execution of one or more agency contracts, purchases or sales reasonably expected to have an annual dollar value in excess of \$1,000;

[5] The individual employee's or appointed official's responsibilities include the direct procurement of goods, services, real estate or other items, other than routine supplies and materials which are not reasonably expected to have an annual dollar value in excess of \$500. Direct procurement includes, but is not limited to, placing an order with a vendor, approval of bills or invoices, signing of sales agreements, or selection of vendors;

(d) Is the member of a board, commission or committee that exercises governing, regulatory, granting or other decision-making authority; or

(e) Is the member of a board, commission or committee that has a policy or policy advising role.

(2) Exemption from financial disclosure reporting does not exempt an employee or appointed official from the conflict of interest requirements and gift restrictions of the Ethics Code. In addition, an exempted employee or appointed official shall:

(a) File a statement disclosing gifts received during the preceding calendar year from any person that contracts with or is regulated by the County, including the name of the donor of the gift and the approximate retail value at the time of receipt; and

(b) Disclose employment and interests that raise conflicts of interest or potential conflicts of interest in connection with a specific proposed action by the employee or appointed official sufficiently in advance of the action to provide adequate disclosure to the public.

D. Failure to file disclosure forms.

(1) If an elected official, appointed official or employee fails to file the disclosure forms by the prescribed deadline, written notice shall be sent by the Commission to the individual giving 15 days to comply and advising that penalties will apply for failure to file.

(2) After the fifteen-day deadline passes without compliance, persons receiving a salary or stipend shall be subject to a fine of \$5 a day up to a maximum of \$250. Payment of fines in full shall accompany submission of late filings. Failure to submit the form or pay the fines shall result in:

(a) A letter of reprimand and deduction of the fines due from the person's salary or stipend; and

(b) If appropriate, enforcement action under § 41-22 of this chapter.

(3) After the fifteen-day deadline passes without compliance, nonsalaried persons serving on boards, committees, agencies, or commissions shall result in:

(a) Temporary suspension from participating in their appointed duties until the failure to file is cured; and

(b) If appropriate, enforcement action under § 41-22 of this chapter.

E. The Commission shall review the financial disclosure statements submitted under this section for compliance with the provisions of this section and shall notify an individual submitting the statement of any omissions or deficiencies.

F. The Ethics Commission may take appropriate enforcement action to ensure compliance with this section.

G. Public record.

(1) The Commission or office designated by the Commission shall maintain all financial disclosure statements filed under this section.

(2) Financial disclosure statements shall be made available during normal office hours for examination and copying by the public, subject to reasonable fees and administrative procedures that may hereinafter be established by the Commission.

(3) If an individual examines or copies a financial disclosure statement, the Commission or the office designated by the Commission shall verify and record:

(a) The name and home address of the individual reviewing or copying the statement; and

(b) The name of the person whose financial disclosure statement was examined or copied.

(4) Upon request by the elected official, appointed official or employee whose financial disclosure statement was examined or copied, the Commission or the office designated by the Commission shall provide the official with a copy of the name and home address of the person who reviewed or copied the employee's financial disclosure statement.

H. Retention requirements. The Commission or the office designated by the Commission shall retain financial disclosure statements for four years from the date of receipt.

§ 41-16. Lobbying disclosure.

A. Registration.

(1) Except as provided in Subsection **D** of this section, any person who engages in lobbying before elected officials, appointed officials or employees shall file a registration as a lobbyist with the Commission on or before the beginning of the calendar year in which a person expects to lobby or within five days after engaging in lobbying activities, if this person, during the calendar year, either:

(a) Spends or intends to spend \$100 or more on food, entertainment, services, or gifts for elected officials, appointed officials or employees or their spouses or dependent children during a calendar year; or

(b) Is compensated \$500 or more in a calendar year for lobbying; or

(c) Cumulatively spends \$500 or more in a calendar year to compensate another person or persons for lobbying to influence an elected official, appointed official or employee in the performance of his or her official duties; or

(d) Cumulatively spends at least \$2,000 or more in a calendar year for salaries, contractual employees, postage, telecommunications services, electronic services (including the creation and/or maintenance of an internet website), advertising, printing, and delivery services for the express purpose of soliciting others to communicate with an elected official, appointed official or employee to influence that person in performance of his or her official duties.

(2) A person who engages in lobbying on behalf of more than one person or business entity shall file a separate registration for each such person or business entity.

(3) A person who engages in lobbying may terminate his or her registration by written notice to the Commission. Any reports outstanding under this section must be submitted with this notification. Termination shall be effective 30 days after receipt by the Commission of a properly filed notice.

(4) Registration content. A registration statement shall include:

(a) A complete identification of the lobbyist;

(b) A complete identification of any other person or entity on whose behalf the lobbyist acts; and

(c) The subject matters on which the lobbyist proposes to lobby.

(5) The registration period may not exceed one year and must end by December 31.

B. Lobbying reports.

(1) Each lobbyist shall file with the Commission one report covering the period beginning January 1 through June 30, to be filed by July 31, and one report covering the period beginning July 1 through December 31, to be filed by January 31. If the lobbyist is not an individual, an authorized officer or agent of the entity shall sign the form. A separate activity report shall be filed for each person on whose behalf the lobbyist acts.

(2) The report shall disclose:

(a) The value, date and nature of any food, entertainment, or other gift provided any elected official, appointed official and employee or immediate family members of any elected official, appointed official and employee;

(b) The identification of the elected official, appointed official and employee receiving one or more gifts with an aggregate value of \$20 or more;

(c) The amount and source of all compensation paid to the lobbyist for or in connection with all lobbying activities; and

(d) A breakdown of expenditures on the activities described in § 41-16A.

(3) If any report filed under this subsection contains the name of an elected official, appointed official or employee or his or her immediate family member as required under this subsection thereof, the Commission shall notify the elected official, appointed official or

employee within 30 days. Following notification of the inclusion of his or her name in a report filed by a lobbyist, an elected official, appointed official or employee shall have 30 days to file a written exception to the inclusion of his or her name or that of an immediate family member.

(4) The Commission may require submission of such other reports or additional information as it deems necessary to serve the purpose of this chapter.

(5) All registrations and reports filed pursuant to this section shall be maintained by the Commission, or an office designated by it, and shall be made available during normal office hours for examination and copying by the public, subject, however, to such reasonable fees and administrative procedures as may be established by the Board of County Commissioners or by the Commission. The forms shall be retained for four years from the date of receipt.

C. Lobbying prohibition. No person may engage in lobbying activities on behalf of another person for compensation, the payment of which is contingent upon the passage or defeat of any action by the Board of County Commissioners.

D. Exemptions. The provisions of this § 41-16 do not apply to the following acts:

(1) Professional services in drafting bills or in advising and rendering opinions to clients as to the construction and effect of proposed or pending Board of County Commissioners actions when these services do not otherwise constitute lobbying activities;

(2) Appearances before the Board of County Commissioners upon its specific invitation or request, but only if the person engages in no other activities in connection with the passage or defeat of Board of County Commissioners actions;

(3) Appearances as part of the official duties of a duly elected or appointed official or employee of the state, a political subdivision of the state or of the United States and not on behalf of any other entity;

(4) Actions of a publisher or working member of the news media in the ordinary course of the business of disseminating news or making editorial comment to the general public who does not, however, engage in further or other lobbying that would directly and specifically benefit the economic, business or professional interests of himself or herself or his or her employer;

(5) Appearances by an individual before the Board of County Commissioners at the specific invitation or request of a registered lobbyist, and provided that the witness identifies himself or herself to the Board of County Commissioners as testifying at the request of the lobbyist and the individual engages in no other acts during the reporting period that require registration;

(6) The representation of a bona fide religious organization solely for the purpose of protecting the right of its own members to practice the doctrine of the organization;

(7) Appearances as part of the official duties of an officer, director, member or employee of an association engaged exclusively in lobbying for counties and municipalities and not on behalf of any other entity; or

(8) Actions as part of the official duties of a trustee, an administrator, or a faculty member of a nonprofit independent college or university in the state, provided the official duties of the individual do not consist primarily of attempting to influence legislative action or executive action.

§ 41-17. Exemptions; modifications.

The Commission may grant exemptions and modifications to the requirements of this chapter if the Commission determines that applying the provisions would:

- A. Constitute an unreasonable invasion of privacy; and
- B. Significantly reduce the availability of qualified persons for public service; and
- C. Not be required to preserve the purposes of this chapter.

Article IV. Protection from Harassment and Retaliation

§ 41-18. Employees, appointed officials and elected officials.

A. A complainant may not be discharged, threatened, harassed or otherwise retaliated against regarding compensation, terms, conditions, or privileges of employment or office because:

- (1) The complainant reported a violation or suspected violation of this chapter; or
- (2) The complainant participated in the investigation, hearing, inquiry or other proceedings conducted by the Commission.

B. The provisions of this section do not apply to a complainant who knowingly makes a false report.

§ 41-19. Complainants and witnesses.

Because a complainant or witness reported a violation or suspected violation of this chapter or participated in the investigation, hearing, inquiry or other proceedings conducted by the Commission, a County representative:

- A. May not deny, unreasonably delay or otherwise interfere with the processing of an application for County services, permits or approvals that would have otherwise been authorized in the ordinary course of business; or
- B. May not misuse the authority of the representative's position to intimidate, harass or engage in discriminatory enforcement.

§ 41-20. Complaints of harassment and/or retaliation.

Complaints of harassment and/or retaliation under this article shall be considered by the Commission under § 41-12 of this chapter.

Article V. Enforcement; Penalties

§ 41-21. Cease-and-desist order.

If the Ethics Commission determines any violation of any provision of this chapter, the Ethics Commission may take one or more of the following actions:

- A. Issue a cease-and-desist order; or
- B. Seek enforcement of the order in the Circuit Court of Calvert County or any circuit court in the State of Maryland. The court may compel compliance with this section by issuing an order to cease and desist from a violation, grant other injunctive relief, and impose a fine or civil penalty of up to \$2,500.

§ 41-22. Disciplinary action.

A. Notwithstanding § **41-21**, the Ethics Commission may, in addition to or in place of those powers set forth in § **41-21**:

- (1) Issue letters of reprimand or censure; or
- (2) Order the return of anything of value.

B. In addition and on recommendation of the Ethics Commission to the appointing authority, an elected official, appointed official or employee found to have violated this chapter may be subject to disciplinary or other appropriate personnel action, including censure, termination, or suspension from receiving payment of salary or other compensation, in accordance with Chapter **86** of the Code of Public Local Laws of Calvert County, Maryland, and § 3-505 of the Labor and Employment Article of the Maryland Annotated Code, pending full compliance with the terms of an order of the Ethics Commission or a court of competent jurisdiction.

§ 41-23. Lobbyist sanctions.

A. Sanctions. If the Commission determines that a lobbyist has violated § **41-16** of this chapter, the Commission may:

- (1) Require the lobbyist to file any additional reports or information that reasonably relates to information required under this chapter;
- (2) Impose a fine not exceeding \$5,000 for each violation; or
- (3) Subject to Subsection **B** of this section, suspend the registration of a regulated lobbyist.

B. Suspension or revocation of registration.

- (1) If the Commission determines it necessary to protect the public interest and integrity of the governmental process, the Commission may issue an order to:

(a) Suspend the registration of a lobbyist if the Commission determines that the lobbyist:

[1] Has knowingly and willfully violated § **41-16** of this chapter; or

[2] Has been convicted of a criminal offense arising from lobbying activities; or

(b) Revoke the registration of a lobbyist if the Commission determines that, based on acts arising from lobbying activities, the lobbyist has been convicted of bribery, theft or other crime involving moral turpitude.

(2) If the Commission suspends the registration of a lobbyist under Subsection **B(1)** of this section, the lobbyist may not engage in lobbying for compensation for a period, not to exceed three years, that the Commission determines as to that lobbyist is necessary to satisfy the purposes of this chapter.

(3) If the Commission revokes the registration of a lobbyist under Subsection **B(1)** of this section, the lobbyist may not engage in lobbying for compensation.

(4) If the Commission initiates a complaint based on a violation or conviction described in Subsection **B(1)** of this section, the Commission shall initiate the complaint within two years of the latter of:

(a) The Commission's knowledge of the violation; or

(b) The date the conviction becomes final.

(5) The termination or expiration of the registration of a lobbyist does not limit the authority of the Commission to issue an order under this subsection.

C. Reinstatement.

(1) Subject to Subsection **C(2)** of this section, an individual whose registration as a lobbyist is suspended or revoked may apply to the Commission for reinstatement.

(2) The Commission may reinstate the registration if the Commission determines that reinstatement of the individual would not be detrimental to the public interest and the integrity of the governmental process, based on:

(a) The nature and circumstances of the original misconduct or violation leading to suspension or revocation;

(b) The individual's subsequent conduct and reformation; and

(c) The present ability of the individual to comply with the provisions of the Ethics Code.

D. Penalties for late filing. If the respondent is a lobbyist, for each report required under this chapter that is filed late, the respondent shall pay a fee of \$10 for each late day, not to exceed a total of \$250.

§ 41-24. Changes in State Ethics Law or regulations.

Upon notification from the State Ethics Commission of changes in the Maryland Public Ethics Law or regulations, the Commission shall determine, within 90 calendar days of receipt of notification, whether

a revision to the Calvert County Ethics Code is to be recommended to the Board of County Commissioners for Calvert County.

§ 41-25. Severability.

If any section, sentence, clause or phrase of this chapter is held invalid or unconstitutional by any court of competent jurisdiction, then said ruling shall not affect the validity of the remaining portions of this chapter.



CALVERT COUNTY ETHICS COMMISSION

P.O. Box 1104 Prince Frederick, Maryland 20678

December 15, 2020

Commissioner Kelly D. McConkey
2951 Brickhouse Rd.
Dunkirk, MD 20754
VIA EMAIL

Re: Letter of Censure and Cease and Desist

Commissioner McConkey:

The Ethics Commission unanimously finds that you violated Calvert County Ethics Code § 41-13 ("Conflict of Interest") by participating in the August 6, 2019 vote to adopt "Option B" to expand the geographical boundaries of the Huntingtown Town Center to include two properties which you own.


As set forth in the enclosed, written Findings of Fact and Conclusions, your participation in that vote constitutes a textbook conflict of interest. By participating in that vote, you improperly participated in a matter in which you have an economic interest or, alternatively, which would have a direct or indirect financial impact on you, as distinguished from the public generally. The Ethics Commission further finds that you were not "required by law to act" in that matter, such as would permit you to participate pursuant to Section 41-13(A)(2)(b), despite your conflict of interest.


Accordingly, the Ethics Commission hereby issues this **LETTER OF CENSURE** and orders you to **CEASE AND DESIST** from any further violations of Section 41-13. Pursuant to Section 41-22, should you violate this Cease and Desist order, the Ethics Commission will seek enforcement of the order in Circuit Court to include a fine or civil penalty of up to \$2,500 per violation, as well as other injunctive relief.

Pursuant to Section 41-12(J) of the Ethics Code, you may appeal this decision in the Circuit Court of Calvert County in the manner prescribed by Section 7-201 *et seq.* of the Maryland Rules of Procedure.

Sincerely,


Jennifer Mazur, Chair


Wayne Millette, Vice Chair


Matthew Raymer, Secretary

cc: Steven B. Preller, Susan Dzurec, Catherine Grasso, Mike Hart, Thomas E. Hutchins, Steven R. Weems, Earl F. Hance

FINDINGS OF FACT AND CONCLUSIONS

Pursuant to Section 41-12(G)(5) of the Calvert County Ethics Code (“Ethics Code”), the Calvert County Ethics Commission (“Ethics Commission”) adopts these Findings of Fact and Conclusions in the matter involving Commissioner Kelly D. McConkey.

The Ethics Commission considered two complaints submitted by Calvert County residents in this matter. Each alleges that Commissioner McConkey violated Section 41-13 (“Conflicts of Interest”) of the Ethics Code by participating in the August 6, 2019 vote of the Board of County Commissioners (“BOCC”) to adopt and incorporate “Option B” into the Draft Comprehensive Plan, thereby amending the draft Comprehensive Plan so as to expand the Huntingtown Town Center’s boundaries to include two properties which he owns.

The Ethics Commission unanimously finds that Commissioner McConkey violated the Ethics Code as alleged. As set forth below, Commissioner McConkey: (1) had a clear interest in the matter which he reasonably may have been expected to know; or, alternatively, (2) his participation had a direct or indirect financial impact on him, as distinguished from the public generally. The Ethics Commission further finds that Commissioner McConkey was not “required by law to act” in the matter, such as would permit his participation in accordance with Section 41-13(A)(2)(b), despite his conflict of interest.

I. Procedural Objections

As an initial matter, we address the following procedural objections raised by Commissioner McConkey: (1) that the complaints should be dismissed as insufficient, because they were not physically signed by the complainants; and (2) that Ms. Jennifer Mazur, Chair of the Ethics Commission, should recuse herself from these proceedings. The Ethics Commission denies both objections, for the reasons set forth below.

a. Whether Complaints Should Be Dismissed for Lack of Signature

Commissioner McConkey argues that the Ethics Commission should dismiss the complaints as a procedural matter, because the complainants did not physically sign their names on the complaints which they submitted to the Ethics Commission via email.

We reject this argument. The Ethics Code provides that any person “may file a written, signed complaint with the Commission alleging a violation of any of the provisions of” the Ethics Code. § 41-12(A). It does not specify *how* such complaints must be signed. The Ethics Commission has long accepted complaints submitted via email, and the County Website includes an online form by which any individual may submit a complaint, concern, or other inquiry to the Ethics Commission without requiring their physical signature.¹

Both complainants submitted their complaints to the Ethics Commission in their own name and using their own email addresses, as the Ethics Commission has long accepted. Commissioner McConkey does not raise any doubt as to whether the purported complainants actually filed the complaints, nor does he allege any harm or prejudice to him in these proceedings as a result of complainants submitting their

¹ <https://www.calvertcountymd.gov/FormCenter/County-Administration-29/Calvert-County-Ethics-Commission-Complai-225>

complaints via email without physical signature. The Ethics Commission therefore finds that both complaints were sufficiently “signed” as required by Section 41-12(A).

b. Demand for Jennifer Mazur’s Recusal

Commissioner McConkey demands that the Chair of the Ethics Commission, Ms. Jennifer Mazur, recuse herself from these proceedings on the following grounds: (1) that Ms. Mazur has a conflict of interest arising from a *Calvert Recorder* article in which she is quoted, and in response to which Commissioner McConkey has now filed a lawsuit against her and the County; and (2) that she has made ex parte communications with the complainants in this matter.

After consulting with Counsel, Ms. Mazur declines to recuse herself, and the remaining Ethics Commission members concur with that decision.

i. Standard for Recusal

The Ethics Code requires a member of the Ethics Commission to recuse himself or herself from a matter if “a personal interest presents *a conflict of interest* or an *appearance of a conflict of interest*.” § 41-9(H) (emphasis added). Thus, a “personal interest,” however defined, is insufficient; there must be a “conflict of interest” or the “appearance of a conflict of interest” for recusal to be required.

As set forth in Section 41-13, a “conflict of interest” would exist in relevant part where: (1) Ms. Mazur has a *financial* interest in the matter; (2) a Business Entity sufficiently related to her is a party to the matter; or (3) where participation would, to her knowledge, have a direct or indirect financial impact upon her, her “Qualified Relative,” or her or the Qualified Relative’s affiliated Business Entity. *See also* Ethics Commission Rules of Procedure § 8(a) (providing in relevant part that an Ethics Commission Member “should recuse himself or herself from participating in a particular Ethics Proceeding” where the member “has a Conflict of Interest as defined in Section 41-13 of the Code”). Commissioner McConkey makes no such allegation here.

Similarly, the Ethics Code defines “apparent conflict of interest” to mean an “existing or anticipated situation or condition *that gives an indication of a conflict of interest* that is not or may not be a conflict of interest but can erode the confidence and trust of the people in the conduct of county business.” § 41-2 (emphasis added). As defined, then, there must be some “indication of a conflict of interest” for an apparent conflict of interest to exist. Again, no such indication exists here.

ii. *Calvert Recorder* “Interview”

Neither the *Calvert Recorder* “interview,” nor Commissioner McConkey’s separate lawsuit against Ms. Mazur and the County, give rise to a “conflict of interest” or an “apparent conflict of interest” on Ms. Mazur’s part.

As a factual matter, Commissioner McConkey’s attorney significantly misrepresents the nature and substance of Ms. Mazur’s communication with the *Calvert Recorder*. Rather than “giving an interview,” as he alleges, Ms. Mazur specifically *declined to comment* when contacted by the reporter, as the article itself makes clear:

In an interview with the Recorder, ethics chairman Jennifer Mazure [sic] would only say “We have more advisory opinion requests and ethics complaints than we normally have. I cannot reveal the nature of the complaints.”

Mazure [sic] said they are still allegations until the ethics board has completed its investigations.²

From this, Commissioner McConkey’s attorney alleges that Ms. Mazur “confirmed” that the Ethics Commission “has commenced investigations with respect to the complaints” and “revealed” that “the initial investigation had been concluded, and that it was moving forward to formal investigation.”³ The article states no such thing.

Nor does Commissioner McConkey’s subsequent lawsuit against Ms. Mazur and the County create a “conflict of interest” or “appearance of a conflict of interest” requiring her recusal. For such conflict of interest to exist, Ms. Mazur must have some financial interest in these proceedings as set forth in Section 41-13. Commissioner McConkey does not allege as such, and Ms. Mazur does not appear to have any financial interest in the outcome of the complaints against Commissioner McConkey, regardless of the fact that he has brought a civil lawsuit, independent of these proceedings, in a different venue and alleging an entirely different cause of action.

iii. Ex Parte Communications

Commissioner McConkey additionally argues that Ms. Mazur should recuse herself in light of her ex parte communications with the complainants. Ms. Mazur admits that she responded to complainants’ inquiries regarding the status of these proceedings, but states that she confirmed only that a hearing would be held on October 14.⁴ Absent additional information, these ex parte communications do not require her recusal here.

As previously discussed, the Ethics Code requires recusal only where a “conflict of interest” is involved. § 41-13. Ms. Mazur’s ex parte communications do not give rise to any indication that she has a financial interest in the complaints against Commissioner McConkey, as would be required to show a “conflict of interest,” nor does Commissioner McConkey allege as such.

Commissioner McConkey correctly asserts that the Ethics Commission’s Rules of Procedure provide that any Commission Member “may recuse him or herself and withdraw from the Proceeding, if they deem it necessary to eliminate the effect of a prohibited Ex Parte communication,” Rules of Procedure § 7(B). However, such recusal is merely permitted, not required. Furthermore, it is not clear that recusal is “necessary to eliminate the effect” of the communication in this instance.

At the time of these communications, Commissioner McConkey already had filed suit against the Ethics Commission in open court, the court had held a public hearing, attended by a complainant, at which the fact the Ethics Commission would hold a hearing was discussed, and the court’s subsequent, unsealed order indicated that such a hearing would take place. The fact that a hearing would take place therefore

² Tamara Ward, *Ethics Complaints Filed Against McConkey*, CALVERT RECORDER (Sept. 25, 2019), available at: https://www.somdnews.com/recorder/news/local/ethics-complaints-filed-against-mcconkey/article_7acb9953-931f-58ff-8fd8-9367f874c2b6.html.

³ Hearing Transcript at 11.

⁴ *Id.* at 18.

was already a matter of public knowledge, and the effect of Ms. Mazur's ex parte communication was to confirm information that was already made public in court proceedings brought by Commissioner McConkey.⁵ Such confirmation does not give rise to any additional "effect" which would counsel, or be addressable by, Ms. Mazur's recusal from this matter.

II. Facts and Analysis

Having considered Commissioner McConkey's objections, we now turn to the substance of the complaints against him.

a. Facts

Commissioner McConkey owns two properties at issue, 22 Cox Road and 28 Cox Road, in Huntingtown. Prior to the August 6 vote of the Board of County Commissioners, neither property lay within the existing Huntingtown Town Center boundaries.

In preparing the Draft Comprehensive Plan,⁶ the Calvert County Planning Commission presented the Board of County Commissioners ("BOCC") with two options regarding potential expansion of the Huntingtown Town Center, "Option A" and "Option B."⁷

Under Option A, the Town Center would expand from its current boundaries east across Route 4 to include Huntingtown High School only. Under Option B, the Town Center would expand to include Huntingtown High School, as well as certain properties including those owned by Commissioner McConkey. Based on materials provided at the June 25 and August 6 hearings,⁸ Option B appears to increase the Huntingtown Town Center's boundaries by approximately one quarter square mile more than Option A, including the two properties owned by Commissioner McConkey.

At its June 25, 2019 hearing,⁹ the Board of County Commissioners voted on a motion to adopt and incorporate Option B (then referred to as the "2017 Draft Plan") into the Comprehensive Plan. Commissioner Hart made the motion. Commissioner McConkey abstained¹⁰ from that vote, which

⁵ Commissioner McConkey speculates that Ms. Mazur revealed the date of the hearing to the complainants. That would not change our analysis if true. Once it was public knowledge that a hearing would occur, revealing the precise date on which that hearing would occur is of minimal additional effect, in our view.

⁶ The Comprehensive Plan is the "official policy document of Calvert County":

The Board of County Commissioners, the Planning Commission, and county departments use the Plan as a guide when preparing functional plans and small area plans, evaluating proposed projects or considering changes to legislation, such as the zoning ordinance. State agencies use the Plan to determine whether or not to provide state funding for a local project (e.g. Rural Legacy, Community Legacy, public infrastructure, community development projects, etc.).

⁷ See "Calvert County Comprehensive Plan Update," June 25, 2019 at Slide 8, *available at*:

<https://www.calvertcountymd.gov/DocumentCenter/View/26543/WS1---Calvert-County-Comprehensive-Plan>; Mark Willis, "Calvert County Comprehensive Plan: Response to Commissioner Feedback," Aug. 6, 2019 at Slide 7, *available at*: <https://www.calvertcountymd.gov/DocumentCenter/View/28471/OB--Adoption-of-the-Calvert-County-Comprehensive-Plan>.

⁸ *Id.*

⁹ Video of the hearing is available at:

https://calvertcounty.granicus.com/player/clip/1220?view_id=24&redirect=true. Discussion of the Huntingtown Town Center expansion begins at 3:09:27.

¹⁰ Though not the subject of either complaint, we note that the Ethics Code required Commissioner McConkey to recuse himself from that vote, rather than simply abstain. Under the County's recusal procedures, an individual

resulted in a 2-2 tie. As a result of that tie, the motion to adopt and incorporate Option B failed at that meeting.

The BOCC considered Option B again at its August 6, 2019 hearing,¹¹ and Commissioner Hart made the motion to adopt. Rather than abstain as he had previously, Commissioner McConkey seconded the motion and then voted in its favor. With his vote, the motion passed, 3-2, incorporating Option B into the Draft Comprehensive Plan.

At the same meeting, the BOCC subsequently voted to adopt the Draft Comprehensive Plan as a whole, 3-2, including Option B as previously adopted and incorporated.¹²

b. Legal Standard

The Calvert County Ethics Code broadly prohibits elected officials, appointed officials, and county employees (“covered individuals”) from participating in matters in which they have a conflict of interest, with certain exceptions. Two provisions are relevant here.

First, the Ethics Code provides that covered individuals “shall not participate” in a matter if the individual “has an interest in the matter of which the Elected Official, Appointed Official or Employee reasonably may be expected to know.” § 41-13(A)(1)(a). The Ethics Code defines “interest” to mean “any economic interest, either legal or equitable, whether or not subject to an encumbrance or a condition, owned or held, in whole or in part, jointly or severally, directly or indirectly,” with certain exceptions. § 41-2(N). A covered individual therefore violates the Ethics Code if he or she participates in a matter in which they have an economic interest.

Second, the Ethics Code prohibits covered individuals from participating in a matter on behalf of the County where doing so “would, to their knowledge, have a direct or indirect financial impact, as distinguished from the public generally, on” that individual. § 41-13(A)(1)(c). Neither the Ethics Code nor the State Ethics Code define the phrase “financial impact,” but the Ethics Commission understands it to mean some financial effect on the covered individual.

There is one relevant exception. Where a conflict of interest does exist, the Ethics Code nevertheless allows an otherwise disqualified Elected Official, Appointed Official, or Employee to participate in a matter if that person is “required by law to act.” § 41-13(A)(2)(b).

i. Recusal Procedure

The Ethics Commission’s 2015 Advisory Opinion on Recusal¹³ clarifies the requirements and procedures for recusal. First, “if any doubt exists” regarding a potential conflict of interest, “advice from the Ethics Commission ought to be sought.” Second, recusal should be “absolute,” such that the conflicted official may not participate in any discussion or vote on the matter, discuss the matter or the review of the

who recuses him or herself must not merely refrain from voting, but also must physically leave the room where any discussion or vote is taking place.

¹¹ Video of this hearing is available at:

https://calvertcounty.granicus.com/player/clip/1230?view_id=24&redirect=true. Discussion of the Huntingtown Town Center expansion begins at 57:30.

¹² *Id.* The vote to adopt the Comprehensive Plan begins at 1:25:15.

¹³ *Available at:* <https://www.calvertcountymd.gov/DocumentCenter/View/9558/Advisory-Opinion-on-Recusal?bidId=>

matter with others, or even physically remain in the room during any hearings, discussion, or voting on the matter.

c. Analysis

We consider the following questions in reviewing the complaints: (1) did Commissioner McConkey have a conflict of interest in the vote to adopt Option B; and (2) if so, was he nevertheless “required by law to act” in the matter, thereby permitting his participation?

i. Did Commissioner McConkey Have a Conflict of Interest?

The Ethics Commission finds that Commissioner McConkey had a conflict of interest in voting to adopt Option B for incorporation into the Comprehensive Plan. The record makes clear that Commissioner McConkey had an interest in the matter of which he reasonably may have been expected to know; and that, alternatively, his participation would, to his knowledge, have had a direct or indirect financial impact on him, as distinguished from the public generally.

1. Commissioner McConkey’s Interest in the Matter

The Comprehensive Plan itself makes clear that Commissioner McConkey had an interest in the matter, due to the implications for his property of being included in the expanded Town Center boundaries.

To begin with, the Comprehensive Plan is the “official policy document of Calvert County” with respect to development:

The Board of County Commissioners, the Planning Commission, and county departments use the Plan as a guide when preparing functional plans and small area plans, evaluating proposed projects or considering changes to legislation, such as the zoning ordinance. State agencies use the Plan to determine whether or not to provide state funding for a local project (e.g. Rural Legacy, Community Legacy, public infrastructure, community development projects, etc.).¹⁴

As the adopted Comprehensive Plan explains, Town Centers “are the County’s primary designated growth areas” and “are areas where TDRs [transferable development rights] can be used to increase density to a maximum consistent with the approved Town Center zoning.” *Id.* at ES-4.

The Comprehensive Plan further states that Town Centers,

“are the focus of the county’s commercial and employment activities. These places are designated for the higher intensity and greater variety of commercial and residential development within the plan boundaries . . . Directing commercial, retail, and housing development to Town Centers is a central element in strengthening economic vitality in Calvert County and an important counterpart to policies designed to preserve the county’s rural land.

Id. at 8-14.

¹⁴ Comprehensive Plan at 1-1 (Adopted August 6, 2019), *available at*: https://www.calvertcountymd.gov/DocumentCenter/View/28975/Comprehensive-Plan_Adopted-2019.

The June 25, 2019 “Calvert County Comprehensive Plan Update” provided to the BOCC similarly notes in relevant part that Town Centers “promote business growth by providing infrastructure.”¹⁵

In furtherance of its Town Center strategy, the Comprehensive Plan identifies specific goals, objectives, actions for implementing those objectives, and the County parties responsible for carrying out those actions.

Defined objectives include “Encourage Development in Town Centers,” “Provide Incentives for Business Development in Town Centers and Employment Centers,” and “Make Improvements to Public Services and Facilities in Town Centers.” Comprehensive Plan at 11-19.

Specific action items include the following:

- “Prioritize the provision of broadband in Town Centers”;
- “Streamline the development review process in Town Centers. Maintain a fast-track permitting process for targeted businesses”;
- “Explore the use of TDRs [Transferable Development Rights] to increase commercial intensity in Town Centers”;
- “Provide county staff designated for each Town Center”;
- “Consider loans, tax reduction, and changes in taxing policies within State designated Priority Funding Areas (PFAs), grants, infrastructure, and training for workers”;
- “Direct public investment to infrastructure, services and support facilities in Town Centers”; and
- “Develop cost-sharing strategies that leverage private sector investment in water and sewer extensions.”

Id.

In addition, Town Centers are designated as Priority Funding Areas (PFA) for state funding purposes. Comprehensive Plan at A-23. “Being designated as a PFA makes the areas eligible for state investment including highways, sewer and water construction, economic development assistance, and state leases or construction of new state office facilities.” *Id.* at A-57.

Inclusion within a Town Center therefore has substantial economic and/or financial implications for property therein. This includes eligibility for state funding, fast tracked permitting review, investments in public infrastructure, use of transferable development rights, and other targeted benefits intended to foster commercial and other growth in those areas. As such, Commissioner McConkey clearly had “an interest in the matter.” Given his role as a County Commissioner who participated in numerous hearings on this subject, he also reasonably may have been expected to know of his interest in this matter.

2. Financial Impact Distinguished from the Public Generally

Alternatively, his participation at the time would, to his knowledge, have had a direct or indirect financial impact on him, as distinguished from the public generally. As discussed above, it is clear that his participation would have had a direct or indirect financial impact on him as the owner of those two properties. As a County Commissioner, he also would have had knowledge of that financial impact. Lastly, the impact of his participation upon him was distinguished from the impact upon the public

¹⁵ *Supra* n.7 at Slide 6.

generally, given the small amount of land at issue (roughly one quarter of a square mile) of which his property comprised a substantial part.

ii. Was Commissioner McConkey Required by Law to Act?

Commissioner McConkey argues that, regardless of whether he had a conflict of interest, Section 41-13(A)(2)(b) of the Ethics Code nevertheless permitted him to participate in the matter, because he was “required by law to act” in adopting a Comprehensive Plan. We disagree.

The Ethics Commission generally agrees that Section 41-13(A)(2)(b) permits the County Commissioners to vote either for or against the Comprehensive Plan as a whole, regardless of how that plan might affect their individual interests, because state law requires that they do so. However, the vote to adopt Option B into the Comprehensive Plan and the vote to adopt the Comprehensive Plan as a whole were two separate and distinct votes.¹⁶

While state law requires the County to adopt a Comprehensive Plan, it does not require Commissioners to choose between competing suggestions as to what that plan should entail. Nor does it permit them to do so without regard to the County’s conflict of interest rules. Commissioner McConkey does not – and cannot – claim that he was required to participate in the vote to adopt Option B.¹⁷ Therefore, he was not “required by law” to participate in that vote and, as a result, his conflict of interest was not excused for participation under Section 41-13(A)(2)(b).

III. Conclusion

Having found that Commissioner McConkey violated the Ethics Code as alleged, the Ethics Commission adopts the strongest course of action within its authority by issuing a Letter of Censure and ordering Commissioner McConkey to cease and desist from any further violations of Section 41-13.

The Ethics Commission issues the Letter of Censure, rather than a milder Letter of Reprimand, in light of the apparent premeditated nature of the violation. Commissioner McConkey’s vote did not occur in a vacuum; instead, he participated only after his previous abstention caused Option B to fail, and despite significant public interest and criticism that his participation would violate the County’s conflict of interest rules.

At no point did Commissioner McConkey seek the Ethics Commission’s guidance or approval regarding his vote. Instead, he requested a nonbinding opinion letter from the County Attorney, which Commissioner McConkey voluntarily produced to the Ethics Commission in advance of the October 14

¹⁶ *Supra* n.11 & 12.

¹⁷ At the Ethics Commission’s hearing on October 14, 2020, Commissioner McConkey stated that “there was no vote to adopt the whole Comprehensive Plan.” Hearing Transcript at 47. The video of the hearing shows otherwise, *supra* n.12, and the following exchange at the Hearing makes clear that he was not required to vote on Option B:

Q: So were you legally required to adopt Option B?

A: Was I legally required to do a certain option? No. I could choose the option that I feel is the best option [...]

Q: If I understand the questioning, it sounded like you were required to adopt it, so I just wanted to clarify that point.

A: Well, I’m legally [required] to adopt a comprehensive plan is what I said.

hearing.¹⁸ That letter, dated one day prior to his August 6 vote to adopt Option B, makes clear that Commissioner McConkey and the County Attorney anticipated that the Ethics Commission would find a conflict of interest in the matter, as it both identifies that possibility and sets forth his best arguments in Commissioner McConkey's defense.

In doing so, it appears that Commissioner McConkey determined to "paper up" his vote in advance, so as to place himself in the best position possible to defend against any subsequent complaints or action by this body, rather than make a good faith effort to comply with the law.

If the Ethics Code has any meaning, it must stop elected officials from voting on matters in which they have a conflict of interest. The vote for Option B might have been the right choice from a policy perspective; it might not have been. We take no position in that regard. Our concern is that Commissioner McConkey had a conflict of interest, knew about that conflict of interest, and voted anyway. On that, our position is clear: Commissioner McConkey violated the Ethics Code by participating in that vote.

¹⁸ The County Attorney's opinion letter does not have force of law. As it notes, "the Calvert County Code only authorizes the Ethics Commission to provide an advisory opinion."

Maryland State Court of Appeals
Notice of Denial/Dismissal
McConkey v. Calvert County Ethics Commission
Petitions for Writ of Certiorari –
December, 2022

PETITIONS FOR WRIT OF CERTIORARI

September Term, 2022

Denied/Dismissed December 19, 2022

Butler, Stanley C., Jr. v. State - Pet. Docket No. 261

Cahall v. Tyler Donegan Duncan Real Estate - Pet. Docket No. 254

Comptroller v. Leadville Insurance Co. - Pet. Docket No. 249

Fox, Ricardo, Jr. v. State - Pet. Docket No. 268

Frawley, Nhut Daniel v. State - Pet. Docket No. 247

Hershey v. GEICO General Ins. - Pet. Docket No. 257

Horn, Byron v. State - Pet. Docket No. 259

In the Matter of Pfeffer - Pet. Docket No. 269

Jackson, Derrick v. State - Pet. Docket No. 230

Kelly v. Kelly - Pet. Docket No. 252

Kittle v. Steifel - Pet. Docket No. 298

McConkey v. Calvert Cty. Ethics Comm'n - Pet. Docket No. 248

Pieterse v. Tyler Donegan Duncan Real Estate - Pet. Docket No. 253

Presidential Title v. Mayor & City Cncl. of Baltimore - Pet. Docket No. 236

Santos Bey, Erick Javier v. State - Pet. Docket No. 260

Wilburn, Stacey E. v. State - Pet. Docket No. 263

Williams, David Lee v. State - Pet. Docket No. 258

Link for verification:

<https://www.courts.state.md.us/coappeals/petitions/202212petitions>