

[Advisory Opinion 1998-1]

MONTGOMERY COUNTY ETHICS COMMISSION

ADVISORY OPINION

JANUARY 30, 1998

The Ethics Commission reviewed an official's request for advice regarding whether he should recuse himself from officially participating in discussions and decisions regarding:

- (1) the historic designation of Chevy Chase Village ("Phase I"); and/or
- (2) the historic designation of Chevy Chase 3, Martin's Additions to Chevy Chase, the Town of Chevy Chase, or certain residences in each, as historic ("Phase II").

His correspondence indicated that these properties have been identified on the Atlas of sites for possible inclusion in the County's Historic Master Plan and that there had been some interest in making these designations final. He also stated that he resided in a home in Martin's Additions in which his wife has a life estate and that there is a possibility that this house will be designated in Phase II of the process. Because he is a member of a public body that will be involved in making the designations, he requested guidance regarding his participation, if any, in Phase I and Phase II of these proceedings. In particular, he asked if his wife's interest required him to recuse himself from participation in the decision(s) regarding: (1) Chevy Chase Village or any of its residences; (2) the Town of Chevy Chase; (3) Chevy Chase Section 3; and/or (4) Martin's Additions, or any part of it.

Implicitly, his request suggested that: (1) there are historically meaningful distinctions between Phase I and II; and (2) the decisions the public body makes concerning Phase I would not have a direct impact on any subsequent decisions regarding Phase II.

The Montgomery County Ethics Law, in pertinent part, states:

- (a) Unless permitted by a waiver, a public employee must not participate in:
 - (1) any matter that affects, in a manner distinct from its effect on the public generally, any:
 - (c) property or business in which a relative has an economic interest, if the public employee knows about the relative's interest . . .

The Commission carefully reviewed the official's letter and other correspondence regarding this matter.

Based upon the information, the Commission determined that the Ethics Law did not prohibit this official's participation in Phase I, i.e., the designation of Chevy Chase Village,

because neither the official nor his wife had an interest in that area that could be directly affected by his participation. This conclusion was based upon an understanding that the two phases were distinct and that the decisions in Phase I would not have a direct or binding impact upon decisions in Phase II. In the event that the Commission's understanding was incorrect, the official was advised to obtain a waiver from the Commission because Section 19A-11(a)(1)(C) could prohibit his participation in Phase I.

Further, the Commission concluded that the official could not participate in any deliberations, discussions or decisions regarding Phase II because his wife has an interest in a property that could be directly affected by the decisions made in Phase II.