

BCC's and Authority in Enabling Legislation

Commissioners and Friends:

In consultation with a County Attorney, I am sharing with you the authority given to Boards, Commissions and Committee in the enabling legislation.

No Montgomery County, MD Board, Commission or Committee is authorized by law to pursue litigation against the County, State or Federal government or any other entity.

“Commission meetings are not the proper forum to troubleshoot or litigate individual grievances. If the commission wants to advise the County that a certain policy it is following is ill-advised, that is appropriate. The County meaning the County Executive and County Council. And that advice can be borne of individual experiences. But those individual experiences are properly discussed only in the context of formulating recommendations addressing some broader policy issues.”

Please see guidance in email below and the attachments. Please let me know if you have any questions.

Betsy,

Following up on our meeting this morning. This BCC exists solely to advise the County on disability matters, as specified in the County Code. Discussion of individual commissioners' plans to sue the County is outside of that function. Commission meetings are not the proper forum to troubleshoot or litigate individual grievances. If the commission wants to advise the County that a certain policy it is following is ill-advised, that is appropriate. And that advice can be borne of individual experiences. But those individual experiences are properly discussed only in the context of formulating recommendations addressing some broader policy issue.

I'm also including some advice former County Attorney Marc Hansen prepared regarding BCCs and lobbying. That advice is still valid and can be share with the Commission.

Finally, commissioners should be aware of limitation in ethics law on public employees representing or providing advice to another person (that would qualify as an expert opinion in court) in a matter adverse to the County. There are some special rules for BCC members.

- 19A-14(g) (1) A public employee must not with respect to a particular matter represent another person, or provide advice to another person that would qualify as an expert opinion in a court, if:
- (A) a County agency or the County is a party to the matter and the person being assisted has a position adverse to the County agency or the County; or
 - (B) the County agency or the County has a direct and substantial interest in the matter that is adverse to the interests of the person being assisted.
- (2) This subsection does not apply to a public employee who renders assistance to:
- (A) another public employee if the matter involves a personnel action;
 - (B) a member of the public employee's immediate family if the public employee renders the assistance without compensation; or
 - (C) a person for whom the public employee serves as a guardian, trustee or other personal fiduciary.

(3) This subsection does not apply to:

(A) a public employee while carrying out the employee's official duties; or

(B) a member of a board, committee or commission if:

(i) the member is not compensated by the County;

(ii) the matter does not relate to the responsibilities of the board, committee

or commission; and

(iii) the board, committee or commission solely performs an advisory

function.

(4) In this subsection "represent" means to act on behalf of another person, and includes acting as an agent or attorney for the other person.

Edward B. Lattner | Chief

Division of Government Operations

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