



City of Bowie Ethics Commission
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August 21, 2014

[REDACTED]
Bowie City Council
15901 Excalibur Rd
Bowie, MD 20716

[REDACTED]:

As a member of the City Council, you inquired whether your spouse's contractual relationship with an entity that seeks to do business with the City of Bowie raises any issues under the City ethics law.¹ Your spouse is the owner of a business that did some work for Berman Enterprises on a project in Prince George's County. Berman is also engaged in a proposal to work on a project with the City of Bowie. From the information that you provided in your inquiry, your spouse's contract with Berman was completed at about the same time that you became involved with the City of Bowie's project with Berman Enterprises. According to your inquiry, you "enthusiastically endorsed" the entity's participation in this project. It is not known whether the business relationship between your spouse and Berman had been fully concluded at the time of this endorsement.

Several subsections of §2-70A are, or may be relevant to your inquiry. In the first instance, subsection (1)(a) provides, in pertinent part, that a City official "may not participate in any matter. . . if to his knowledge, the official. . . or a qualified relative of the official. . . has an interest therein." A qualified relative includes a spouse. §2-68O.

In the inquiry letter, your spouse stated, and you concurred, that "[you were] not aware of my previous provision of services to Berman since [you were] not involved in [your spouse's] business activities." Whether this assertion is true is outside of the scope of the ethics commission's consideration. Section 2-69J provides that the commission "advisory opinions shall be limited to those facts and circumstances presented to the commission by the requestor."

¹ The inquiry came by letter from your spouse, which you also signed. Since §2-69J provides that the ethics commission shall respond to a request for an opinion from "any person subject to the provisions of this Article," this response may only be directed to you.

Assuming that this statement is true, and that you did not know of your spouse's business relationship with Berman at the time of your enthusiastic endorsement of the Berman project with the City, §2-70A would not have applied to your official participation in the City Council's consideration of the Berman project. That provision only applies where a City employee or official has actual knowledge that the spouse has an interest in the matter in which the official will be participating. In any event, the inquiry letter did not suggest that your spouse's business had any "interest" in the Bowie project.² If your spouse has, or had, no interest in the Bowie project with Berman, this provision of law does not apply.

The inquiry does not stop here. The Ethics Commission also considered the other subsections of §2-70A. This letter will discuss each of those provisions in succession. Subsection (b) provides that an official may not participate in any matter if one of the following is a "party thereto":

1. "Any business entity in which the official or employee has a direct financial interest of which he may reasonably be expected to know."

A "financial interest" is defined in §2-68(g) as:

1. Ownership of any interest as the result of which the owner has received, within any of the past three (3) years, or is presently receiving, or in the future is entitled to receive, more than One Thousand Dollars (\$1,000) per year; or
2. Ownership, or the ownership of securities of the kind representing or convertible into ownership, of more than three (3) percent (3%) of a business entity by a City official or employee, or the spouse of an official or employee.

There is nothing in the inquiry letter that suggests that you have any "financial interest" in Berman Enterprises. Even if your spouse has or had a financial interest in Berman at the time of your endorsement of the project, this provision does not include the financial interests of a spouse, unless the spouse's interest in Berman would be comparable to a 3% ownership of Berman. So, technically or legally, your spouse's financial interest in Berman, is not relevant to this inquiry.³

2. "Any business entity for which the official, employee or qualified relative of the official or employee is an officer, director, trustee, partner, or employee;"

² "Interest" is defined, in pertinent part as, "any legal or equitable economic interest, whether or not subject to an encumbrance or a condition, that is owned or held, in whole or in part, jointly or severally, directly or indirectly." §2-68(j).

³ The Ethics Commission believes that the exclusion of a spouse's financial interest from in §2-68(g)(1) is an oversight and recommends that the law be amended to include the spouse in this provision.

As a contractor with Berman, your spouse is not an officer, director, trustee, partner, or employee of that entity, so this provision does not apply.

3. "Any business entity with which the official or employee or, to the knowledge, of the official or employee, a qualified relative is negotiating or has any arrangement concerning prospective employment."

There is no indication that at the time of your endorsement, your spouse was negotiating or had any arrangement concerning prospective work for Berman. If there were no such negotiations or arrangements, this provision would not apply.

4. "Any business entity [Berman] that is a party to an existing contract with the official or employee, or which, to the knowledge of the official or employee is a party to a contract with a qualified relative [spouse's business], if the contract could reasonably be expected to result in a conflict between the private interests of the official [you] or employee and the official duties of the official or employee."

Since you stated that you had no knowledge of your spouse's relationship with Berman at the time of your endorsement (if the relationship still existed at that time), your participation may not be said to constitute a conflict of interest under this provision.

6. Any business entity [Berman] that [you] know is a creditor or obligee of the official or employee, or that of a qualified relative [your spouse] of the official or employee with respect to a thing of economic value and, as a creditor or obligee, is in a position to affect directly and substantially the interest of the official or employee or a qualified relative of the official or employee.

Even if your spouse is owed money by Berman and is therefore a creditor, the provision is only applicable if Berman is in a "position to affect directly the interests of [your spouse]." The Ethics Commission does not have all the facts available to make that determination.

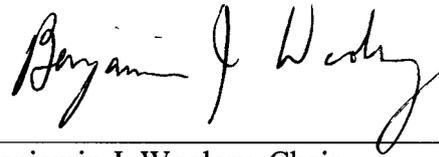
Conclusion:

Without the possession of additional facts, the Ethics Commission must rely on the facts provided in your inquiry. Since you have stated that you were unaware of your spouse's relationship with Berman at the time you made your endorsement of Berman's proposed project with the City, the Commission cannot find that you violated any provision of the ethics law by endorsing the project. If your spouse has no current or anticipated future business with Berman, the ethics law does not prohibit you from participating further in any matter involving Berman's business with the City.

The Ethics Commission does advise that you should publicly disclose your spouse's former contractual relationship with Berman for the purposes of transparency. Further, the Commission recommends that you request your spouse to provide you with

information about contractual relationships your spouse may have with persons or entities that may be interested in doing business with the City, in order to avoid the potential for any future conflicts, or apparent conflicts of interest.

Thank you for your inquiry.

A handwritten signature in black ink that reads "Benjamin J. Woolery". The signature is written in a cursive style with a large, stylized initial 'B'.

Benjamin J. Woolery, Chair
Bowie City Ethics Commission