

**ADVISORY OPINION
CASE NO. 00008.A**

To: Staff

Re: Participation in [the] making [of] a governmental decision

Date: April 20, 2000

The Board of Ethics has considered staff's request of April 6, 2000 for an advisory opinion interpreting the phrase "participate in [the] making [of] a governmental decision," as used in sections 2-156-030(a) and 2-156-080(a) of the Governmental Ethics Ordinance. This advisory opinion is based on the hypothetical facts presented by staff, and its application is limited to those facts.

FACTS: Staff presents two sets of hypothetical facts:

Hypothetical One. A City employee or official sits as a member of a City agency, board or commission. During the course of a hearing conducted before that body, the City official or employee examines a witness. A vote, from which the employee or official recuses himself, is taken by the agency, board or commission at the conclusion of the hearing, resulting in a decision or action by that body.

Hypothetical Two. A City employee or official sits as the chair of a City agency, board or commission. The City official or employee presides over a hearing conducted before that body. The City official examines no witnesses during the hearing. A vote, from which the employee or official recuses himself, is taken by the agency, board or commission at the conclusion of the hearing, resulting in a decision or action by that body.

RELEVANT ORDINANCE PROVISIONS: Section 2-156-030(a) (Improper Influence) states:

No official or employee shall make, *participate in making* or in any way attempt to use his position to influence *any City governmental decision* or action in which he knows or has reason to know that he has any economic interest distinguishable from its effect on the public generally (emphasis added).

Section 2-156-080(a) (Conflicts of Interest) states:

No official or employee shall make or *participate in the making of any governmental decision* with respect to any matter in which he has any economic interest distinguishable from that of the general public (emphasis added).

QUESTIONS PRESENTED:

1. Does a City employee or official participate in [the] making [of] a governmental decision, within the meaning of sections 2-156-030(a) and 2-156-080(a) of the Governmental Ethics Ordinance, if, as a member of a City agency, board or commission, he examines a witness testifying during a hearing before that body which results in a decision or action by that body?
2. Does a City employee or official participate in [the] making [of] a governmental decision, within the meaning of sections 2-156-030(a) and 2-156-080(a) of the Governmental Ethics Ordinance, if he presides over a hearing before a City agency, board or commission which results in a decision or action by that body?

BOARD PRECEDENT: This is a case of first impression for the Board.

APPLICATION OF THE LAW TO THE FACTS: The phrase “participate in [the] making [of] a governmental decision” is not defined in the Governmental Ethics Ordinance. Nor has the phrase been construed to date by Board opinion. The ordinary meaning of the word “*participate*” is “*to join or share with others: take part.*” Webster’s II, New Riverside University Dictionary (1984).

With regard to the first question, the Board notes that Black’s Law Dictionary defines the “*examination*” of a witness as “*...the series of questions put to him by a party to the action, or his counsel, for the purpose of bringing before the court...the knowledge which the witness has of the facts and matters in dispute, or of probing and sifting his evidence previously given.*” Black’s Law Dictionary, Fifth Edition, West (1979). By virtue of the critical function an examination fulfills—the presentation and probing of evidence—the Board finds that “to examine a witness” during the course of a hearing, in one’s capacity as a member of the body before which that hearing is being conducted, is to “take part” in the hearing and, thereby, in the ultimate decision made by that body, even if one does not “take part” in the vote.

As to the second question, the Board notes that Black’s Law Dictionary defines “*preside*” as “*to occupy the place of authority as of president, chairman, moderator, etc.; to direct, control or regulate proceedings as chief officer, moderator, etc.; to possess or exercise authority...*” Id. By virtue of the authority, and the ability to direct or control, inherent in the position of one who presides, the Board finds that “to preside” over a hearing is to “take part” in the hearing and, thereby, in the ultimate decision made by that body, even if one does not “take part” in the examination of witnesses or in the vote.

DETERMINATIONS: Accordingly, the Board determines that:

1. a City employee or official participates in [the] making [of] a governmental decision, within the meaning of sections 2-156-030(a) and 2-156-080(a) of the Governmental Ethics Ordinance, if, as a member of a City agency, board or commission, he examines a witness testifying during a hearing before that body which results in a decision or action by that body; and
2. a City employee or official participates in [the] making [of] a governmental decision, within the meaning of sections 2-156-030(a) and 2-156-080(a) of the Governmental Ethics Ordinance, if he presides over a hearing before a City agency, board or commission which results in a decision or action by that body.

Our determinations are not necessarily dispositive of all issues relevant to this situation, but are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. Other laws or rules also may apply to this situation. Be advised that City departments have the authority to adopt and enforce rules of conduct that may be more restrictive than the limitations imposed by the Ethics Ordinance.

RELIANCE: This opinion may be relied upon by any person involved in any specific transaction or activity indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

Darryl L. DePriest
Chair