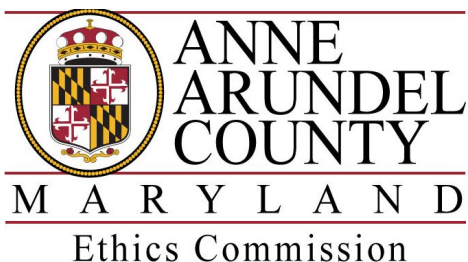


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Michael S. Botsaris, Executive Director*

November 10, 2020

JoAnne Gray
Administrative Officer
Anne Arundel County Council
44 Calvert Street
Annapolis, Maryland 21401

RE: **Bill 93-20**
Report and Recommendation

Dear Ms. Gray:

Thank you for submitting a copy of Bill 93-20 introduced on October 19, 2020 defining 'usual and customary constituent services' as that term is used in Sections 7-5-104 (Representation) and 7-5-107 (Prestige of Office) of our ethics laws. Pursuant to the Anne Arundel County Charter, Article X, Section 1001A(d), please let this letter serve as our report of findings and recommendations.

The Ethics Commission has carefully reviewed the Bill and for the reasons stated below cannot recommend or approve of the Bill.

Neither the State Ethics Code, nor any other county in the State of Maryland, attempts to legislatively define the term 'usual and customary constituent services,' and for good reason. Each local ethics commission is tasked with the duty and responsibility to administer their public ethics law. In Anne Arundel County, that means the seven citizen members of the Ethics Commission are tasked with ensuring that County officials and employees use impartial and independent judgment when conducting the business of the County, and that their actions are not subject to improper influence, or even the appearance of improper influence. See Section 7-1-102(a) – Legislative findings; policy, AACO Ethics Code. This is how our system of checks and balances works.

The broad and arbitrary definition of 'usual and customary constituent services' proposed by your Bill, if enacted into law, would eliminate much of the oversight duty assigned to the Commission and would substantially negate and overrule the advice and advisory opinion thoughtfully articulated by this Ethics Commission over the last 27 years.

The Bill as drafted would permit a member of the County Council to act as an advocate for any citizen concerning most any matter before any County agency, or even before a County judicial or quasi-judicial decision-making body, something that is strongly discouraged by ethics opinion nationwide. The Bill does not require communications be on the record or conducted in a public forum and does not prohibit private communications or closed-door meetings with decision makers. These are the basic tenets of transparency and ethical conduct of government officials. In addition, the definition proposed runs in direct conflict with Section 7-5-104 of our Ethics Code, which prohibits employees from assisting or representing others in any matter where the county has an interest - and while "usual and customary constituent services" is an exception to that rule, the new definition proposed would essentially swallow the rule.

Although the Bill as drafted prohibits direct or indirect reprisal or favoritism, who is going to monitor or decide when such a threat is made or is even implied? There is the potential for an implicit threat any time a member of the Council appears before a County agency or decision-making authority. The Council has responsibility for setting the County budget, and any agency personnel would undoubtedly be concerned that opposing a Council member could have a detrimental effect, one that would never be subject to proof of "reprisal."

When a member of the Council takes an advocacy position on behalf of a constituent, there is a potential for conflict with the views and positions of other members of the Council person's constituency. For example, while a business operating in the district of a Council member may wish to expand its operations through a zoning change, other residents of that same district may oppose the expansion because they want to preserve the environment, cut down on traffic, etc. This places the Council person in the untenable position of advocating on behalf of one constituent to the detriment of another.

It is the job of the Ethics Commission to look at a totality of the facts and circumstances of a particular situation or event and determine whether the reason for a member of the County Council being asked to appear before a County agency is to use the prestige of their office to influence the proceeding. Is the Council member being asked to assist because of his or her expertise in a particular field, or only because of their official position? This is exactly the type of circumstance we, as a Commission, want to avoid, not encourage. It becomes even more troubling when a Council person's advocacy is somehow tied to a constituent's political policy or political clout or campaign contribution history.

All of these factors go into the decision making process when the Commission is asked to give an opinion or give advice on a matter concerning "constituent services" and whether, in the Commission's opinion, such constituent service is "usual and customary." We should not leave it up to government officials to broadly define the circumstances of acceptable behavior and to then apply that definition to their own actions, outside of independent review and consideration by a body of citizens who have been tasked with the duty and responsibility to insure the business of our County government is not subject to improper influence, or even the appearance of improper influence, as clearly set forth in the preamble to our County Ethics Code.

Council members must make constituent services decisions every day, without the Commission's input. The Commission cannot, and does not want to be, in a position of approving every such decision. Most Council members know when the facts and circumstances of a particular constituent service request requires further inquiry and advice. The Ethics Commission has always been responsive with succinct, practical and timely advice when asked. If a Council person does not agree with the advice given, changing the law to include arbitrary and overly broad definitions that will allow unacceptable behavior is not the answer. The complaint process is the ultimate method by which we exercise our oversight authority if something goes awry, but it is used only as a last resort. The Commission prefers to address concerns before they rise to the level of a formal ethics complaint. By legislating such an overly broad definition of "usual and customary constituent services," the Council is taking the case by case "smell test" out of the equation and giving themselves a reason and opportunity to not question their decision, or seek further advice. That is not good ethics policy, nor is it the intention of the Ethics Code, in our opinion.

Sincerely,

Anne Arundel County Ethics Commission

Cc: Stuart Pittman, County Executive