

CITY OF FREDERICK ETHICS COMMISSION
OPINION AND ORDER

Procedural History

This matter arises from an ethics complaint filed by Jan Gardner¹, signed under oath and hand-delivered to the acting city attorney on June 22, 2022. The complaint alleges that Katie Nash, a member of the City of Frederick's Board of Aldermen, violated the City of Frederick Ethics Ordinance (Chapter 21 of the Frederick City Code)², as further described herein.

The City of Frederick Ethics Commission convened on June 30, 2022 and determined that there existed a reasonable basis for believing a violation had occurred. Subsequently, a hearing was scheduled for August 25, 2022. (See § 21-3(b)(4): "If there is a reasonable basis for believing a violation has occurred then the subject of a complaint or investigation shall be afforded an opportunity for a hearing conducted in accordance with any applicable rules of procedure.")

The Commission convened on August 25, 2022 to hear and decide the complaint. Present at the hearing were three members, constituting a quorum: Phillip W. Bowers (Vice Chair, acting as Chair), Maureen Connors, and Cornelius R. Fay III. Also present were Ms. Gardner, her witness David Diehl, Alderwoman Nash, her attorney Paul Flynn, Acting City Attorney Rachel Nessen, City Clerk Phyllis Hane, and Paralegal Lee Whisner. Both parties were given the opportunity for opening statements, presentation of witnesses and documents, cross-examination, and closing statements.

Summary of Testimony and Arguments

Complainant: Ms. Gardner testified in support of her complaint, in which she alleged that Alderwoman Nash violated the Ethics Ordinance when she emailed the leadership of certain of the City's neighborhood advisory councils (NAC) in her role as a paid lobbyist for International Association of Firefighters (IAFF) Local 3666. Ms. Gardner was told by Diana Halleman, a NAC 5 coordinator, that there had been prior emails and that these emails had been sent to her and to at least two other leaders of the NACs, although none of the recipients' addresses appear on the email. Ms. Gardner stated that the emails and press releases caused a lot of alarm in the community; NAC 5 and NAC 8 leaders went to the County and were concerned that EMT service was going to be eliminated or denied on the west side of the City of Frederick. Ms. Gardner argued

¹ Jan Gardner is the sitting County Executive of Frederick County. However, because she filed the complaint in her personal capacity, she is referred to in this opinion as "Ms. Gardner".

² All code references herein are to the City of Frederick Ethics Ordinance.

that it was improper for Alderwoman Nash to use the NACs, which are City bodies, to communicate on behalf of her client - benefitting her client, her business, and herself. Ms. Gardner contended that these actions violated certain provisions of the Ethics Ordinance, specifically § 21-4, "Conflicts of interest", excerpted in relevant part as follows:

(b) *Restrictions on participation.* *Except as permitted by the Commission under section 21-8 of this chapter, an official or employee subject to this chapter may not participate in...*

(1) *except in the exercise of an administrative or ministerial duty that does not affect the disposition of the matter, any matter in which, to the knowledge of the official or employee, the official or employee, or a qualified relative of the official or employee, has an interest;*

(2) *except in the exercise of an administrative or ministerial duty that does not affect the disposition of the matter, any matter in which any of the following is a party:*

(A) *a business entity in which the official or employee has a direct financial interest of which the official or employee may reasonably be expected to know;*

(B) *a business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner, or employee;*

(c) *Employment and financial interest restrictions.*

(1) *Except as permitted by the Commission under section 21-8 of this chapter when the interest is disclosed or when the employment does not create a conflict of interest or appearance of a conflict, an official or employee may not. . .*

(C) *represent any party, whether or not for compensation, before the Board of Aldermen or any board or commission of the City.*

(f) *Prestige of office.*

(1) *An official or employee may not intentionally use the prestige of office or public position: for the private gain of that official or employee or the private gain of another. Use of the prestige of an office includes, but is not limited to:*

(A) *acting, or creating the appearance of acting, on behalf of the City by making any policy statement, or by promising to authorize or to prevent any official action of any nature, when the official or employee is not authorized to make such a statement;*

(B) *representing the official's or employee's personal opinion to be the official position of the City or any agency of the City;*

- (C) using or attempting to use the official's or employee's official position improperly to unreasonably request, grant, or obtain in any manner any unlawful or unwarranted privileges, advantages, benefits or exemptions for the official or employee or another person; and*
- (D) using, for immediate private financial gain or advantage, City time or the City's staff, facilities, equipment or supplies to secure privileges or exemptions for the official or employee or others.*

Ms. Gardner presented two exhibits for the Commission's consideration: (1) A supplemental memorandum, in which she referenced and attached Advisory Opinion 21-03, dated November 3, 2021, and reiterated that Alderwoman Nash violated the Ethics Ordinance, ignoring the advice of the Commission by contacting the NACs and urging them to contact the County Executive about the removal of paramedic service, benefitting personally from being paid by IAFF 3666; and (2) A listing of clients of Alderwoman Nash's lobbying business . Ms. Gardner argued that it is difficult for Alderwoman Nash to separate herself from her role as a city official, and that because she is a member of the Board of Aldermen, people such as NAC leaders will take seriously what she has to say to them. People know who she is, even if she does not use her title or her government email address, and disclosure that she was acting on behalf of a client is insufficient. She used the NACs to put out information to get them to lobby the County. Ms. Gardner stated that this was a clear violation of the Ethics Ordinance, and that her goal was to ensure the public trust and public safety. She asked for a finding of violation, the issuance of a cease and desist order and a fine.

Mr. David Diehl spoke as a witness in support of the complaint. Mr. Diehl expressed concerns about the inflammatory language Alderwoman Nash posted on her personal Facebook page. He stated that she did not make it clear that she was not posting these missives as a member of the Board of Aldermen. He testified that when he raised these concerns with Alderwoman Nash, she replied that since she had reported the relationship in official filings with the state and had sought advice from the Ethics Commission, his complaint was without merit. However, as quoted in a June 20 article in the *Frederick News-Post*, Alderwoman Nash declined to comment because she is a lobbyist. According to Mr. Diehl, this constituted a tacit acknowledgement that she knew she was acting in conflicting roles.

Respondent: Alderwoman Nash testified that her e-mail was not targeted to NAC coordinators, and that recipients did not receive it because they were NAC coordinators. She was not attempting to use the NACs to advocate on behalf of her client. This was not one of a series of emails sent to NACs, contrary to Ms. Gardner's assertion. Rather, the email at issue was sent

to a number of community leaders, some of whom may also have been NAC coordinators. She stated that she was invited to attend a NAC 5 meeting to discuss this topic, and she declined specifically because she did not want to create the appearance of a conflict.

Alderwoman Nash submitted five exhibits for the Commission's consideration: (1) Her request for an advisory opinion, dated October 21, 2021; (2) Advisory Opinion 21-03, issued by the Ethics Commission in response to her request; (3) Ms. Gardner's complaint; (4) Her June 23, 2022 email from Ms. Nash to Belinda Morton-Rusk; and (5) a list of email addresses. During his closing remarks, Mr. Flynn also submitted a copy of several pages of the 2021 Ethics Guide issued by the Joint Committee on Legislative Ethics of the Maryland General Assembly.

Alderwoman Nash argued that neither the City in general nor the NACs in particular have any control over the County's decision-making. Her email does not use her title as an elected official, City of Frederick stationary, her official email address, or anything to create the appearance of speaking on behalf of the City. Her press releases and emails specifically disclosed that she was speaking for a client. This disclosure is intended to assure compliance with Advisory Opinion 21-03. She did not vote or otherwise participate in any legislative matter coming before the Board of Aldermen on behalf of any of her clients. There was no information to suggest that any of the entities on her client list have had a matter before the Board of Aldermen. The allegations raised by Ms. Gardner lack the very premise of the law. That is, since Alderwoman Nash never participated in anything, she literally cannot have violated the provisions relating to restrictions on participation. There is fundamental confusion about what these rules mean.

Findings of Fact and Conclusions of Law

The Ethics Commission is responsible pursuant to City Code § 21-2(b)(2) for hearing and deciding any complaint filed regarding an alleged violation of the Ethics Ordinance by any person. The Commission deliberated at the conclusion of the August 25 hearing and carefully considered the testimony of the witnesses and the other evidence presented by the complainant and the respondent. The Commission hereby finds as follows:

- (1) Alderwoman Nash is the owner of a lobbying firm, Greater Good Maryland, LLC, a Maryland limited liability company for which she filed articles of organization in 2019 and that is registered as a lobbyist with the State of Maryland.
- (2) The neighborhood advisory councils are city bodies. The NACs were created by City resolution. The City's website contains extensive information about the NACs. They are "public bodies" of the City for purposes of the Maryland Open

Meetings Act. NAC coordinators are appointed by the Mayor with the advice and consent of the Board of Aldermen.

- (3)** Alderwoman Nash sent one or more emails to numerous individuals, including NAC coordinators, with one or more press releases attached. The press release(s), listing Katie Nash as media contact, described the County's "plan to remove paramedic coverage" from the west end of the City of Frederick. She also used her personal Facebook page on which she identifies herself as "alderwoman", for similar purposes.
- (4)** While Alderwoman Nash did not use her aldermanic title or any City resources to send the email, people know who she is. She cannot take off her "hat" as an alderman.
- (5)** Alderwoman Nash used her influence as an alderman to encourage the NACs to lobby the County to change something to benefit/favor her client.
- (6)** The Ethics Ordinance prohibits Alderwoman Nash from intentionally using the prestige of her position as an elected official for her private gain or the private gain of her business or her clients. See Ethics Ordinance § 21-4(f). The Ethics Commission concludes that Alderwoman Nash violated this provision when she emailed the NAC coordinators, encouraging them to raise their concerns with the County. She took advantage of the NACs as a conduit for her lobbying efforts, knowing that NAC coordinators would give great weight to issues raised by a member of the City's Board of Alderman, and she did so to benefit her client and her business.
- (7)** With certain exceptions not relevant here, the Ethics Ordinance prohibits Alderwoman Nash from participating in a matter in which she has a legal or equitable financial interest. See Ethics Ordinance §§ 21-4(b)(1). The Ethics Commission concludes that Ms. Nash violated § 21-4(b)(1). She had a financial interest in the matter of the County's plan relating to paramedic service within the City of Frederick, in that she was being paid by IAFF Local 3666 to lobby on its behalf. Ms. Nash impermissibly participated in that matter by asking certain NAC coordinators to raise their concerns with the County.

- (8)** On or about October 12, 2021, while she was an aldermanic candidate, Ms. Nash submitted a request to the Ethics Commission for guidance as to whether she would be able to continue to advocate for her clients as a registered lobbyist upon her election, as well as related issues. In response, on November 3, 2021, the Ethics Commission issued Advisory Opinion 21-03, concluding that the Ethics Ordinance would not prohibit Ms. Nash, if she were elected alderman, from “maintaining [her] employment as a registered lobbyist with the State of Maryland and several local jurisdictions, not including The City of Frederick”. The advisory opinion goes on to state, “Although such employment is not prohibited, it has the potential to raise several concerns”, and points out several sections of the Ethics Ordinance of which Ms. Nash should be particularly aware.

Order

In light of the foregoing, and pursuant to § 21-9 of the Ethics Ordinance, the Ethics Commission finds that based on Ms. Nash’s violation of the Ethics Ordinance, she is hereby ordered to cease and desist from the violations described herein. Specifically, she should not contact any appointed city officials, including NAC coordinators, to encourage them to take action that would benefit her clients and thus her business and herself. The Ethics Commission considered imposing a fine but is not doing so for the present violations as this is her first infringement of the Ethics Ordinance.

Advice

The Ethics Commission would like to provide Ms. Nash with some guidance to help ensure her compliance with the Ethics Ordinance going forward.

- (1)** The Commission believes Ms. Nash should avoid engaging in any lobbying activities on behalf of a client with respect to a matter that has a substantial, direct effect on city residents or city services, including services that Frederick County provides to city residents.
- (2)** The Commission suggests that Ms. Nash avail herself of a Request for Advisory opinion for any questionable areas of professional work, or any unusual situation where an advanced opinion may be helpful to avoid conflicts.

The City of Frederick Ethics Commission

Date: 9/15/2022

BY: Philip Bowers

Philip W. Bowers, Vice Chair