Board of Ethics Decision 23-02 & 03
October 26, 2023

Complaint:

By email dated September 26, 2023, Mr. Ron Stuchinski submitted a formal complaint against Councilman Aaron Penman for violation of Section 207 of the Harford County Charter. Mr. Penman's dual role, state employee of the County Sheriff's Department while serving concurrently as an elected official (councilman) is contrary to the Harford County Council Charter and poses a potential conflict of interest. Mr. Tim Van Emden also submitted an ethics complaint against Councilman Penman on September 27, 2023, cited the same authority prohibiting an elected council member from also being state, county, or municipal employee at the same time.

Facts:

Councilman Penman was elected to the County Council in 2022. Both complaints cite Section 207 of the Harford County Charter as a breach of ethical standards undermining public trust in the County government. Both complaints highlight *Rucker vs. Harford County* (1986) as legal context. Mr. Van Emden adds Article VIII of the MD Constitution mandates that no person may execute functions of two different branches (legislative, executive, or judicial). Mr. Penman is arguably a state employee as a deputy Sheriff because the Sheriff is a state constitutional officer. Harford County Charter Section 207 in pertinent part states: *"During the term of office, the Council member shall not hold any other office of profit or employment in the government of the State of Maryland, Harford County, or any municipality within Harford County, except a position held by virtue of being a Council member. The Council member shall not, during the whole term for which elected or appointed, be eligible for appointment to any County office or position carrying compensation, except to the office of Council member or County Executive in the event of a vacancy."*

Analysis:

After review of the complaints filed by Ron Stuchinski and Tim Van Emden, the complaints allege Councilman Penman is in violation of Section 207 of the Harford County Code. As written, the challenge is a legal interpretation and jurisdictional matter. The County Ethics Board is chartered and exercises jurisdiction over the Ethics Code, which centers primarily on conflicts of interest as set forth in Chapter 23 of HCC. The complainants' allegation states a legal matter (Council membership and conflicting dual roles/duties as a State Employee) and the Board of Ethics is not the appropriate forum to adjudicate legal issues. The complainants may have some type of cause of action in a different forum, but the Board of Ethics is not the appropriate forum, and it is beyond the scope of authority of the Board.

Decisions and Recommendations Made:

Approve to dismiss the complaint due to lack of jurisdiction. The Ethics Board has purview primarily over matters of Conflicts of Interest (HCC Chapter 23). The complaints present issues

of legal interpretation and as stated the Board is not the appropriate forum for adjudication as it is beyond the scope of the Board's authority. As a result, the Board is dismissing the complaint, but is recommending the County Attorney pursue the matter in the appropriate forum.

Board approved decision on November 6, 2023:

Kirk F Vollmecke

Kirk F. Vollmecke
Board of Ethics Chair