Office of the County Attorney
Division of General Counsel
Montgomery County, Maryland

MEMORANDUM

December 10, 1997

To: Kenneth E. Clark, Chair
Charter Review Commission

Via: Marc P. Hansen, Chief Marc Hansen
Division of General Counsel

From: Judson P. Garrett, Jr., Chief
Opinions & Advice

Re: Regulating the Political Activity of Members of Quasi-Judicial Boards

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We are responding to the Charter Review Commission's request for the advice of this Office on the question of whether Montgomery County may regulate the political activity of members of county boards and commissions that exercise quasi-judicial authority. For example, may the County prohibit the members of quasi-judicial boards and commissions from soliciting funds for partisan political campaigns? We advise:

1. Neither the free speech guarantees of the Constitution of the United States nor those of Maryland's organic law prevent Montgomery County from prohibiting members of its quasi-judicial boards and commissions from soliciting funds for partisan political campaigns or restricting other political activities that conflict with a compelling county interest such as the proper performance of quasi-judicial duties, provided the restrictions are narrowly tailored to avoid unnecessary interference with those guarantees.

2. Neither the Federal Election Campaign Act nor the Federal Hatch Act preempts the County's ability to prohibit members of its quasi-judicial boards and commissions from soliciting funds for partisan political campaigns and to restrict other political activities that conflict with a compelling county interest such as the proper performance of quasi-judicial duties.

3. The State Election Code does not preempt the County's ability to prohibit members of its quasi-judicial boards and commissions from soliciting funds for partisan political campaigns and to restrict other political activities that conflict

with a compelling county interest such as the proper performance of quasi-judicial duties.

4. The Local Government Employees Political Activities Law clearly preempts the County's ability to prohibit county *employees* from soliciting funds for partisan political campaigns or engaging in other political activities. However, it does not necessarily follow that the statute also preempts the County's ability to prohibit members of its quasi-judicial boards and commissions from soliciting campaign contributions or restricting other political activities that conflict with the proper performance of their quasi-judicial duties. Although there is a legitimate basis for concluding that the statute does not apply to members of boards and commissions, whether it does is very much a question of first impression that, absent a dispositive decision of the Court of Appeals, can be answered with certainty only by clarifying state legislation.

5. This Office has previously construed Section 405 of the Charter as not prohibiting the County Council from restricting the political activities of members of boards and commissions; however, we must caution that, as that analysis acknowledged, there certainly is room for debate on this issue. Absent a dispositive decision of the Court of Appeals, only a charter amendment can resolve this issue with certainty.

Our advice is founded on the following analysis of applicable law.

I.
FEDERAL LAW

1. The First Amendment.

The First Amendment to the Constitution of the United States prohibits the Congress from making any law abridging freedom of speech. This free speech guarantee also is among the fundamental personal rights and liberties that the Due Process Clause of the Fourteenth Amendment protects from impairment by the States, whether acting directly or through one of their political subdivisions. *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

Freedom of speech is an exceedingly important constitutional right, and it includes the rights of political expression and association. *Buckley v. Valeo*, 424 U.S. 1, 25, (1976).

> [S]peech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison v. Louisiana*, 379 U.S. 64 (1964). Accordingly, the Court has frequently reaffirmed that speech on public issues occupies the "`highest rung of the hierarchy of First Amendment values,'" and is entitled to special protection. *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913

(1982); *Carey v. Brown*, 447 U.S. 455, 467 (1980).

Connick v. Myers, 461 U.S. 138, 145 (1983). Nevertheless, even these fundamental rights are not absolute. *United Public Workers of America v. Mitchell*, 330 U.S. 75, 95 (1947). Not every interference with or impairment of these rights contravenes the First Amendment. *Civil Service Commission v. National Ass'n of Letter Carriers*, 413 U.S. 548, 567 (1973). Indeed, even significant restrictions on protected First Amendment rights may be sustained if the government (be it federal, state or local) demonstrates a sufficiently important interest and employs means narrowly tailored to avoid the unnecessary abridgment of such freedoms. *Buckley*, 424 U.S. at 25.

Thus, it is well settled that the federal government has several interests that are sufficiently compelling to permit, within reasonable limits, restrictions that prohibit federal employees from engaging in certain partisan political activities. [1] These interests include the interest in promoting efficiency and integrity in the discharge of official federal duties; the interest in maintaining proper discipline in the federal public service; the interest in fair elections; and the interest in protecting federal employees from improper political influences. Indeed, these interests even extend to the regulation of state officials and employees administering federally funded programs. *See, Williams v. U.S. Merit Systems Protection Board*, 55 F.3d 917 (4th Cir., 1994) *cert. den.* 133 L.Ed.2d 724 (Hatch Act provision prohibiting covered state employees from running for partisan office neither violated First Amendment rights to free speech nor had a chilling effect on right to partisan political expression).

Like the federal government, state and local governments have compelling interests in promoting efficiency and integrity and maintaining proper discipline within their workforces. *See, Broadrick v. Oklahoma*, 413 U.S. 601 (1973) (state may forbid state employees from soliciting or receiving any assessment or contribution for any political organization, candidacy, or other political purpose; being a member of any national, state, or local committee of a political party; being an officer or member of a committee or a partisan political club; being a candidate for nomination or election to any paid public office; or taking part in the management or affairs of any political party or any political campaign); *Palos v. Brier*, 507 F.2d 1383 (7th Cir. 1974) (police department may restrict police officers from interfering or using influence of their office

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[1] *See, Civil Service Commission v. National Ass'n of Letter Carriers*, 413 U.S. 548, 567 (1973); and *United Public Workers of America v. Mitchell*, 330 U.S. 75, 95 (1947) (Hatch Act provision prohibiting federal employees from taking an active part in political management or in political campaigns); *United States v. Wurzbach*, 280 U.S. 396 (1930) (Corrupt Practice Act provision prohibiting members of Congress from receiving contributions from federal employees for "any political purpose whatever"); *Ex Parte Curtis*, 106 U.S. 371 (1882) (1876 Act prohibiting federal employees not appointed by the President and confirmed by the Senate from giving or receiving money for political purposes from or to other employees of the government); *Democratic State Central Committee v. Andolsek*, 249 F. Supp. 1009 (D.Md. 1966) (Civil Service Commission regulations that prohibited certain federal employees from, among other things, engaging in nonlocal partisan political activities, running for local office as candidates representing political parties, and being involved in political management in connection with the campaign of any partisan party candidate).

for political reasons); *Gray v. City of Toledo,* 323 F. Supp. 1281 (N.D. Ohio 1971) (municipal government may regulate the political activity of its classified civil service employees); *Stack v. Adams*, 315 F.Supp. 1295 (N.D.Fla.1970) (State may require resignation from state public office as condition precedent to qualification as candidate for office of United States Representative,); *Wisconsin State Employees Assoc. v. Wisconsin Natural Resources Bd.*, 298 F.Supp. 339 (W.D.Wis. 1969) (State may require that certain state employees relinquish their right to run for partisan political office as a condition of their public employment); *Johnson v. Civil Service Dept.*, 157 N.W.2d 747 (Minn. 1968) (state may prohibit state employee in classified civil service from filing as candidate for compensated public office); *Fort v. Civil Service Commission*, 392 P.2d 385 (Cal. 1964) (state has a legitimate interest in the uniform regulation of the political activities of government employees); Annot, *Validity, Construction, and Effect of State Statutes Restricting Political Activities of Public Officers or Employees*, 51 ALR 4th 702. "Most states have legislation regulating the political activities of public employees." 26 Am Jur 2d, *Elections* §477.

States also have a significant interest in the integrity of their judicial processes, both in fact and in appearance.

> There can be no doubt that the State has an overriding interest in the integrity and impartiality of the judiciary. There is "hardly * * * a higher governmental interest than a State's interest in the quality of its judiciary" (*Landmark Communications v. Virginia*, 435 U.S. 829, 848 . . . (Stewart, J., concurring) [other citations omitted]. Charged with administering the law, Judges may not actually or appear to make the dispensation of justice turn on political concerns (*cf. Letter Carriers . . . supra*). The State's interest is not limited solely to preventing actual corruption through contributor-candidate arrangements. Of equal import is the prevention of the "appearance of corruption stemming from public awareness of the opportunities for abuse. (*Buckley v. Valeo, supra*, 424 U.S. at 27. . . .).

Nicholson v. State Com'n on Judicial Conduct, 50 N.Y.2d 597, 613, 431 N.Y.S.2d 340,344-50, 409 N.E.2d 818, 826 (1980). Thus, the First Amendment is not offended by Canon 7 of the American Bar Association's Code of Judicial Conduct, which prohibits a judge or judicial candidate from engaging in partisan political activity, including personally soliciting campaign funds for a political campaign. *In re Complaint of Fadeley*, 802 P.2d 31, 39 (Or. 1990). *See also, Connealy v. Walsh*, 412 F. Supp. 146 (W.D. Mo. 1976) (Missouri's interest in nonpartisan courts was sufficiently substantial to justify prohibiting juvenile court employees from displaying partisan bumper stickers on automobiles used for juvenile court business and parked in juvenile court parking lot).

The interest of the state and its subdivisions in the actual and perceived integrity of their quasi-judicial boards and commissions is virtually identical to the state's interest in the integrity of its judiciary. Speaking for a unanimous Court of Appeals of Maryland some thirty-five years ago, Judge Sybert described that interest, in the context of the zoning authority of the members

of the Montgomery County Board of Appeals, as follows:

> As was stated by the Supreme Court of Errors of Connecticut:
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> > * * * It is the policy of the law to keep the official so far from temptation as to ensure his unselfish devotion to the public interest. * * * The modification of zoning regulations * * * whether it be denominated legislative or quasi-judicial, should command the highest public confidence, since zoning restrictions limit a person's free use of his real estate in the interest of the general public good. Anything which tends to weaken public confidence and to undermine the sense of security of individual rights which a citizen is entitled to feel is against public policy. * * *
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> *Mills v. Town Plan and Zoning Commission*, 134 A.2d 250, 253 (Conn. 1957). The circumstances of this case were such that in our view the decision of [a member of the Board of Appeals of Montgomery County] to disqualify himself was justified and consonant with the objective of maintaining the unqualified integrity of the determination.
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> > "* * * Even when conduct would not actually produce distrust in the minds of others but might only create a suspicion of unfairness in the mind of the party to which the decision was adverse, it is far better 'that no room be given for suspicion or cavil. * * *'"
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> *Koslow v. Board of Zoning Appeals*, 112 A.2d 513, 515 (Conn. 1955).
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> Or, as it was put in a terse quotation centuries ago by an eminent biographer, "Caesar's wife must be above suspicion." Plutarch, *Lives: Julius Caesar*, § 10.

Montgomery County Board of Appeals v. Walker, 228 Md. 574, 581 (1962). In furtherance of that interest, the State of Maryland has adopted a Code of Conduct that, in pertinent part, requires its Administrative Law Judges to refrain from political activity inappropriate to the judicial office. *See*, Canon 5, Code of Judicial Conduct for Administrative Law Judges, Office of Administrative Adjudication (December 2, 1991).

Against this background, Montgomery County's interest in the actual and perceived integrity of its quasi-judicial processes is sufficiently compelling to permit the restriction of the political activities of members of its quasi-judicial boards and commissions members, provided the restrictions are sufficiently tailored to further those county interests and avoid unnecessarily

impairing free speech.[2] Thus, for example, the First Amendment would not be offended by a provision that prohibits quasi-judicial officers from soliciting partisan campaign funds.

2. The Federal Election Campaign Act.

The supremacy clauses of both the Constitution of the United States and Maryland's organic law expressly declare the provisions of the former, *and federal laws made pursuant thereto*, to be the supreme law of the land. U.S. Const., Art. VI, Cl. 2; Md. Declaration of Rights, Art. 2. "Thus, it is well established as a principle of our federalism that state and local laws are not enforceable if they impinge upon an exclusive federal domain, *i.e.*, if they attempt to exercise any authority expressly denied them under the federal constitution or by valid federal laws or regulations promulgated thereunder." 59 *Op. Att'y Gen.* 46 (1974).

On its face, the Federal Election Campaign Act provides:

> The provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office.

2 USC §453. Nevertheless, in spite of the sweeping language of this express preemption provision, the Act, in the light of its legislative history, has been construed not to preempt state laws regulating the political activities of state employees. *Pollard v. Board of Police Commissioners*, 665 S.W.2d 333 (Mo. 1984); *Reeder v. Kansas City Board of Police*, 733 F.2d 543 (8th Cir., 1984).

Pollard involved both a First Amendment and a §453 preemption challenge to a Missouri statute that prohibited officers and employees of the Kansas City police department from making contributions to any person in connection with "the promotion of any political party, political club, or any political purpose whatsoever." In rejecting the preemption challenge, the Supreme Court of Missouri, *en banc*, said:

> Even if a reader of the bare language might have some question as to the scope of the express preemption, the legislative history shows clearly that Congress did not intend the preemption language of § 453 to annul state little Hatch Acts, and other state laws, such as § 84.830, having similar incidence and purpose. The overwhelming concern was revision of the Federal Election Campaign Act of 1971. The legislative history makes it clear that 2 U.S.C. § 453 was intended only to preempt the limited field of statutes imposing restrictions on candidates for federal office and their campaign committees.

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[2] *See, e.g., Fort v. Civil Service Commission of the County of Alameda, supra*, in which the Supreme Court of California, while acknowledging the county's legitimate need to limit "the solicitation of political contributions from fellow employees," struck down a county charter provision that was broader than necessary to deal with that particular abuse.

665 S.W.2d at 337. The legislative history to which the Court referred included the Conference Committee Report, which expressly addressed the issue as follows:

> It is the intent of the conferees that any State law regulating the political activities of State and local officers and employees is not preempted or superseded by the amendments to title 5, United States Code, made by this legislation.

See, S. Conf. Rep. No 93-1237, 93d Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Ad. News 5669. The Court also noted that immediately before the Senate agreed to the Conference Committee report, Senator Cannon, the Chairman of the Committee On Rules and Administration, from which the bill was reported and the senior Senate conferee, advised the Senate, in a colloquy with Senator Stevens, that "any State law regulating the political activity of State or local officers or employees is not preempted [or] . . . superseded." 120 Cong. Rec. 34386 (Oct. 8, 1974). The same legislative history also led the U.S. Court of Appeals for the Eight Circuit to conclude that the Missouri statute was not preempted by the Federal Election Campaign Act . *Reeder,* 733 F.2d at 545-46.

Although the legislative history and the caselaw literally speak only of *state* laws not being preempted by 2 USC §453, there is no reason why Congress would have preempted local laws while not preempting state laws. Thus, in light of the specific discussion of federal preemption and the failure to distinguish between state laws and the laws of a state's political subdivision, the legislative history supports the conclusion that 2 USC §453 was not intended to preempt any state or local law regulating the political activities of state or local officers or employees.

3. The Hatch Act.

The Hatch Act restricts the political activities of state and local government employees whose principal employment is in connection with an activity that is financed, in whole or in part, by the federal government. 5 USC § 1501 *et seq*. These employees may not use their official authority or influence for the purpose of: (1) interfering with or affecting the result of an election or a nomination for office; (2) coercing, commanding, or advising a state or local official or employee to pay, lend or contribute anything of value to a party, committee, organization, agency, or person for political purposes; and (3) running for elective office. Nothing in the Hatch Act preempts the ability of state and local governments to impose other restraints on their officials or employees. To the contrary, many states have adopted "Little Hatch Acts" which apply such restrictions to state and local employees not covered by the Hatch Act.

II.
STATE LAW

1. The Maryland Declaration of Rights.

Like its federal counterpart, Maryland's organic law also guarantees freedom of speech.

Article 40 of the Maryland Declaration of Rights solemnly declares, in pertinent part, "that every citizen of the State ought to be allowed to speak, write and publish his sentiments on all subjects, being responsible for the abuse of that privilege." This freedom of speech guarantee is co-extensive with the free speech protections of the First Amendment. *Jakanna Woodworks, Inc. v. Montgomery County*, 344 Md. 584 (1997). Thus, like the First Amendment, Article 40 protects political expression and association, but does not prohibit the state or its counties from restricting the political activities of their employees and officials, provided the restrictions are sufficiently related to compelling state or local government interests and are sufficiently tailored.

2. The Express Powers Act.

Having adopted the charter form of home rule authorized by Article XI-A of the Constitution of Maryland, Montgomery County has the local lawmaking authority conferred by Article 25A, §5 of the Maryland Code (the "Express Powers Act") . In pertinent part, that Act empowers:

> [T]he County Council [to] enact local laws designed to prevent conflicts between the private interests and public duties of any county officers, including members of the county council, and to govern the conduct and actions of all such county officers in the performance of their public duties, and to provide for penalties, including removal from office, for violation of any such laws or the regulation adopted thereunder.

Art. 25A, §5 (Q). Thus, the Express Powers Act gives the County Council ample authority to enact a local law prohibiting the members of quasi-judicial county boards and commissions from engaging in activities that conflict with their official duties.

3. The State Election Code.

In *County Council v. Montgomery Association*, 274 Md. 52 (1975), the Court of Appeals struck down three Montgomery County ordinances designed to regulate the campaign finance practices of candidates for County Executive and the County Council.[3] Applying a test previously articulated in *City of Baltimore v. Sitnick*, 254 Md. 303, 310-311(1969), the Court said that there are three grounds on which otherwise valid local legislation may be invalidated because of state legislation concerning the same matter.

> First, ordinances which conflict with public general laws are invalid. *Sitnick*, 254 Md. 310 - 311; Art. XI-A, § 3, of the Constitution of Maryland. * * * Second, ordinances which deal with matters which are a part of an entire subject matter on which the Legislature has expressly reserved to itself the right to legislate are invalid.

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[3] The ordinances would have provided for the reporting of campaign contributions, banned corporate contributions, and limited contributions from individuals and from candidates to their own campaigns, and limited campaign spending.

> *Sitnick, supra*, 254 Md. at 311, 317. Third, ordinances which deal with an area in which the Legislature has acted with such force that an intent by the State to occupy the entire field must be implied, are invalid. *Id.* at 311, 323.

Montgomery Association, 274 Md. at 59. Based on an examination of the constitutional and statutory provisions regulating elections in Maryland,[4] the Court of Appeals concluded that the framers of the Maryland Constitution intended the regulation of elections to be the province of the General Assembly, and the General Assembly, by enacting the comprehensive State Election Code, had occupied the field of regulation of campaign finances so completely as to exclude local legislation on the subject. *Montgomery Association*, at 58 - 61.

In 1990, Prince George's County enacted a local law that prohibited certain campaign contributions, required a statement of campaign contributions by certain persons, set attribution rules for such contributions, required persons doing business with the county to report their campaign contributions to elected officials in the County, and prohibited lobbyists from attempting to influence the vote of any member of the County Council by the promise of financial support or the threat of financial opposition. *See* Bill 17-1990. In response to an opinion request from the County Attorney, the Attorney General of Maryland, citing *Montgomery Association*, opined that most of those provisions dealt with the matter of campaign financing and therefore were preempted by state law. 75 *Op. Att'y Gen.* 343, 345-46 (1990). It did not matter, advised the Attorney General, whether those local provisions actually conflicted with the State Election Code. As the Court in *Montgomery Association* said, "the General Assembly, by enacting the comprehensive State Election Code, has completely occupied the field of regulation of legislation on the subject." *Id.*, at 342, quoting 274 Md. at 57. However, in the opinion of the Attorney General, that part of the Prince George's County law that restricted the activities of registered lobbyists was not preempted because it was not a campaign financing law, but, rather, a lobbyist regulation law. *Id.* In the words of the Attorney General:

> Under [the State Ethics Law,] Article 40A, § 6-301, each local government is directed to "enact lobbyist regulation provisions substantially similar to the provisions of Title 5 of [Article 40A] which shall be modified to the extent necessary to make the provisions relevant to that jurisdiction and which may be further modified to the extent deemed necessary and appropriate by and for that jurisdiction."[5] This procedure does not authorize a local government to regulate campaign contributions by lobbyists, because the matter of campaign contributions is separately regulated by

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[4]The constitutional provisions were then Article III, §42 (now Art. I, §7) ("The General Assembly shall pass Laws necessary for the preservation of the purity of Elections") and Art. III, § 49 ("The General Assembly shall have power to regulate by Law, not inconsistent with this Constitution, all matters which relate to the Judges of election, time, place and manner of holding elections in this State, and of making returns thereof"). The statutory provisions were various sections of the State Election Code, which is codified as Md. Code, Art. 33.

[5] Former Article 40A, § 6-301 has been recodified. It now is State Government Art., §15-803 (3).

the Election Code. [Citations omitted.]

> Nevertheless, a prohibition against "[a]ttempt[ing] to influence the vote of any member of the County Council" by promising future contributions, or threatening to withhold future contributions, is sufficiently distinct from the regulation of the contributions themselves to fall outside of the zone of preemption. The State Election Code does not regulate the nature of the discourse between lobbyists and officials. Thus, [the lobbyist's provision] is a proper exercise of the County's's power under Article 40A, § 6-301."

75 *Op. Att'y Gen.* at 342.[6]

In strikingly similar fashion, the State Ethics Law requires that local governments "enact provisions to govern the public ethics of local officials relating to conflicts of interest," and provides that those "conflict of interest provisions . . . be similar to the provisions of Subtitle 5 of this title, but may be modified to the extent necessary to make the provisions relevant to the prevention of conflicts of interest in that jurisdiction," Md. Code, State Gov. Art., §§15-803 (1) and 15-804. As with its lobbying provisions, so too the conflict of interest provisions of the State Ethics Law do not authorize a local government to regulate campaign contributions by county employees and officials. However, to prohibit county employees and officials from participating in a partisan political campaign, as, for example, by *soliciting* campaign contributions from parties subject to the regulatory power of the employee or official, is, like the Prince George's County provision blessed by the Attorney General, sufficiently distinct from the regulation of the contributions themselves to fall outside the State Election Law's zone of preemption and within the "conflicts of interest" power vested in the County under both the State Ethics Law and the Express Powers Act. To paraphrase the Attorney General, the State Election Code does not regulate a county's ability to require its officials to avoid conflicts of interest.

For these reasons, we advise that the State Election Code does not preempt a county's power to regulate those political activities of members of its quasi-judicial boards and commissions that present conflicts of interest.

2. *The Local Government Employees Political Activities Law.*

i. Political Activities of Local Government Employees.

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[6]Although the Attorney General did not expressly address the question, his opinion necessarily implies that the election law authority which Art. I, §7 and Art. III, §49 vest exclusively in the General Assembly does not preempt such local laws for exactly the same reason that the State Election Code does not preempt them: such local laws are ethics laws, not election or campaign financing laws.

In what has been referred to as the Anti-Hatch Act,[7] state law specifically guarantees the right of local government employees to engage in political activities. *See*, Md. Code, Article 24, Title 13 (the "Local Government Employees Political Activities Law"). §13-102 of this statute declares that "[e]mployment by a local entity does not affect any right or obligation of a citizen under the Constitution and laws of the United States of America or under the Constitution and laws of this State."[8] §13-103 guarantees employees of local entities the right, with certain exceptions, to "freely participate in any political activity and express any political opinion."[9] §13-104 provides:

> Notwithstanding any other law of this State effective on or before June 30, 1973, or any local law, *the restrictions imposed by this title are the only restrictions on the political activities of an employee of a local entity*,[10] except for the restrictions imposed on employees of a board of supervisors of elections by Article 33, § 2-6 of the Code.

[Emphasis added.][11] The rights of state employees are similarly protected by §2-304 of the State Personnel and Pensions Article (the "State Employees Political Activities Law"). Indeed, the Local Government Employees Political Activities Law and the State Employees Political Activities Law have a common ancestor: the former Political Activities Title of the State Election Code (Md. Code, Art. 33, §§ 28-1 and 28-2), which applied equally to both state and local government employees. *Laws of Maryland* (1973), Ch. 796.[12] There is no reported court

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[7] Such provisions have been dubbed "Anti-Hatch Acts" because their authorization of political activities by state and local government employees stands in marked contrast to the restrictions of the federal Hatch Act. *Att'y Gen. Op.* No. 88-014 (March 1, 1988) (Unpublished).

[8] §13-101 defines "local entity" to mean a county, a municipal corporation, a bicounty or multicounty agency, a county board of education, a public authority, a special taxing district, and any other public entity whose employees are not covered by § 2-304 of the State Personnel and Pensions Article ("the State Employees Political Activities Law").

[9] The exceptions are set forth in §§13-105. An employee of a local entity may not engage in political activity while on the job during working hours, or advocate the overthrow of the government by unconstitutional or violent means.

[10] Nevertheless, as the Commission has noted, "In 62 Op. Atty. Gen. 425, [429] (1977), the Attorney General opined that while [a] state employee's political activity is protected under State law and may not be automatically banned as violative of the state ethics code, such activity is not thereby immunized from review under the ethics code." Montgomery County Ethics Commission Advisory Opinion (January 14, 1997), p. 12.

[11] § 13-106 makes a violation of this title a misdemeanor, punishable by a fine not exceeding $3,000 or imprisonment not exceeding 6 months or both.

[12] In 1993, the Legislature created the new State Personnel and Pensions Article, removed the political activities provisions from the State Election Code, and created separate state and local government provisions. The state provisions are codified in § 2-304 of the State Personnel and Pensions Article and the local government

decision construing the State or Local Government Employees law or their common ancestor in the State Election Law. However, in *Bellevue Fire Fighters Local 1604, Int. Ass'n of Fire Fighters, AFL-CIO, CLC v. City of Bellevue*, 675 P.2d 592 (Wash. 1984), the Supreme Court of Washington held that a similar statute preempted a conflicting city ordinance.[13]

The Attorney General of Maryland has issued several opinions regarding the common ancestor (the "original Political Activities Law") which are instructive on the question of whether Montgomery County may limit the political activity of members of the County's quasi-judicial boards and commissions. In 1977, after advising the State Ethics Commission that the original Political Activities Law insulated state employees who rendered paid as well as unpaid political services, the Attorney General said:

> [W]e do not here conclude that Sections 28-1 and 28-2 prevent the Board of Ethics from ever finding that a State employee has violated the Code of Ethics just because that employee is engaging in political activity. We conclude only that a State employee's political activity - paid or unpaid - cannot be *automatically* banned as violative of the Code of Ethics. For example, paid political activity cannot be automatically regarded as "outside employment which may frequently result in conflicts . . ." However, a State employee's paid or unpaid political activity is in all other respects subject to the same scrutiny as any other outside activity. If the particular political activity violated the Code of Ethics it is not permissible. By way of illustration, if a State employee while engaging in political activity - paid or unpaid - discloses confidential information, he well may have violated Article III, Section 2 of the Code of Ethics.

62 *Op. Att'y Gen.* 425, 429 (1978). (Emphasis in original.) The Legislature is presumed to be aware of this published Opinion of the Attorney General, and its acquiescence in that interpretation supports the conclusion that the Attorney General correctly construed the Legislature's intent with regard to the interaction of the State Ethics Law and the Political Activities Law as applied to state employees.

Given the common origin and identical reach of the State and Local Government Employees Political Activities laws, and the fact that the State Ethics Law requires Montgomery County to enact a county ethics law that is similar to the State Ethics Law, the Attorney General's advice applies equally to county employees. Thus, although the Local Government Political Activities Law prevents the County Ethics Commission from ever finding that a county employee has violated the County Ethics Law solely because the employee engaged in a permitted political

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provisions at Title 13 of Article 24.

[13] The Washington statute gave employees of the state and its subdivisions the right, *inter alia*, to participate in partisan political campaigns and campaigns for nonpartisan political offices.

activity, nevertheless, a county employee's political activity is subject to the same scrutiny as any other outside activity. If the political activity of a county employee violates the Ethics Law, it is not insulated by the fact that it is a political activity. For example, if a county employee discloses confidential information while engaging in political activity, he or she violates the Ethics Law.

In 1978, the Attorney General addressed the question of whether the County Commissioners of Queen Anne's County could require county employees to resign their jobs before running for an elective office.[14] In concluding that the original Political Activities Law preempted the Queen Anne's County Ordinance, the Attorney General advised: (1) that the uniform regulation of the political activities of government employees is clearly a legitimate subject of state legislation; (2) that the Political Activities Law was a public general law that would prevail, to the extent of conflict, over even the home rule acts of a charter county; and (3) that Queen Anne's County employees, like other State and local employees, may run for political office. 63 *Op. Att'y Gen.* 284, 286-87 (1978). However, the Attorney General also noted:

> *Of course, a State officer or employee in a very sensitive position may well be precluded by ethical considerations from running for political office. See, e.g.,* Cannons of Rules of Judicial Ethics. Cannon XXIX, Rule 1231 Maryland Rules of Procedure which bars a person "while holding a judicial position" from becoming "an active candidate . . . for any office other than a judicial office." *See also, Rogan v. Cook*, 188 Md. 345 (1946).

Id., at 287. (Emphasis supplied.)

We agree with the Attorney General, and, here too, his advice is equally applicable to the employees of local governments. The clear purpose of the Local Government Employees Political Activities Law was to prevent local governments from *automatically* prohibiting their *employees* from engaging in political activities as such. Nevertheless, an employee in a very sensitive position may well be precluded by ethical considerations from running for political office. Moreover, for the following reasons, the statute may not preempt the County from restricting the political activities of county *officers*, such as members of quasi-judicial boards and commissions.

ii. Political Activities of Local Government *Officials*.

In 1989, this Office had occasion to construe the reach of the Government Employees Political Activities Act. In an opinion addressed to the County Council, this Office advised:

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[14]In the exercise of the authority granted them by state law to create a county merit system, the County Commissioners had adopted an ordinance that prohibited an employee from becoming a candidate for any elective public office or accepting nomination to any elective public office without first resigning his or her county position.

> State law mandates that the state and its political subdivisions must not prohibit an employee from participation in politics or a political campaign. The state law in question is limited to employees. The term "employee" generally is understood to mean a person who receives compensation in exchange for services and who is subject to supervision.

November 13, 1989 letter to County Council, p.1.[15] The opinion suggested that the Government Employees Political Activities Law did not apply to officials, and therefore did not limit a county's authority to regulate the political activity of members of the Ethics Commission who are officials rather than employees. We also understand that the Attorney General's Office has given informal oral advice that the State Employees Political Activities Law applies only to state employees and not to state officials. For the following reasons, that construction of these statutes may be correct, but the matter is by no means free from doubt.

In interpreting or construing the meaning of a statute, the courts have developed what have come to be known as rules or cannons of statutory construction. The cardinal rule of statutory construction is to ascertain and carry out the intention of the legislative body that enacted the law. *Privette v. State,* 320 Md. 738, 744 (1990). "The beginning point of statutory construction is the language of the statute itself." *Morris v. Prince George's County*, 319 Md. 597, 603 (1990). "[W]hat the Legislature has written in an effort to achieve a goal is a natural ingredient of analysis to determine that goal." *Kaczorowski v. Baltimore*, 309 Md. 597, 603 (1990). Indeed, "[t]he language of the statute itself is the primary source of this intent; and the words used are to be given 'their ordinary and popularly understood meaning, absent a manifest contrary legislative intention." *Williams v. State*, 329 Md. 1, 15 (1992). Therefore, "a term in a statute, when not defined in the statute itself, should be understood to be used in its commonly accepted meaning." *Williams v. Loyola College*, 257 Md. 316, 328 (1970). "However, when the term . . . is a legal term, absent any legislative intent to the contrary, the term is presumed to be used in its legal sense." *Dean v. Pinder*, 312 Md. 154, 161 (1988). *See also*, Sutherland's Statutory Construction, §47.30. Moreover, "in Maryland we do not engage in [the] mindless application of canons of statutory construction." *NCR Corporation v. Comptroller*, 313 Md. 118, 145 (1988). Legislative purpose is critical, must be discerned in light of the context of the legislation, and that context will control the meaning of even the plainest language, especially if the plain meaning would cause an absurd or illogical result. *Kaczorowski*, 309 Md. at 516. Thus, we "search for the legislative intent (the purpose, aim and policy of the legislation) by looking at the words of the statute, as controlled by the context in which they appear, and 'read in the light of other external manifestations of that purpose,' " *Carolina Freight Carriers v. Keane*, 311 Md. 335, 339, (1988), quoting *Kaczorowski*, 309 Md. at 514.[16]

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[15] A copy of the November 13, 1989 opinion is attached.

[16] For this purpose, "context" includes "related statutes, pertinent legislative history, and 'other material that fairly bears on the fundamental issue of legislative purpose or goal . . . .' " *State v. 149 Slot Machines,* 310 Md. 356, 361 (1987), quoting *Kaczorowski,* 309 Md. at 515.

The Local Government Employees Political Activities Law does not define the term "employee" and does not otherwise address the question of whether the term includes or excludes public officials. Neither is there is any pertinent legislative history. Thus, we look to the meaning of the words "employee" and "employment" as ordinarily understood in Maryland law and in the overall context of the statute.

In Maryland, "[t]here is a well recognized distinction between public officers and mere employees" that is rooted in the common law of England. *Hecht v. Crook*, 184 Md. 271 (1945); *Robb v. Carter*, 65 Md. 321, 333 (1886). Indeed, since the dawn of her independence, Maryland's organic law has contained provisions dealing with public "office," "official" or "officer," that do not apply to public employees.[17] This distinction has been reflected in various state statutes. *See, e.g.,* State Gov. Art., §15-102 (g) (the term "employee" means, for the purposes of the State Ethics Law, an individual who is employed by an executive unit, by the Legislative Branch or in the Judicial Branch, but does not include a public official or a state official); State Personnel and Pensions Article, § 22-306 (service credit for appointed or elected officials), and § 22-307 (purchase of service credit by former official). In addition, since at least 1898, the common law of Maryland has recognized and applied a "public official" immunity doctrine that, based upon the same distinction, protects officials, but not employees, from liability under certain circumstances.[18]

In a line of decisions dating back over a century, the Court of Appeals has developed and applied "indicia" for determining whether a particular position is a public office, and consequently whether its occupant is a public officer or merely an employee, and has applied basically the same test in determining whether an individual is a public official for the purposes of the state constitution, various statutes, and the common law. *See, e.g., Howard County Metropolitan Commission v. Westphal*, 232 Md. 334, 339-40 (1963) (Metropolitan Commissioner is a public officer). The indicia of a public office are: (1) the person serves a definite term for which a commission is issued, a bond required and an oath prescribed, *Hetrich v. Anne Arundel County*, 222 Md. 304, 307 (1960); and (2) the position performs important public duties, *Nesbitt v. Fallen*, 203 Md. 534, 544-45 (1954), that are continuing, not just

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[17] *See, e.g.*, Md. Decl. of Rights Const. (1776) XXXII (prohibiting simultaneous holding of more than one office of profit); Md. Decl. of Rights (1851), Art. 32 (dual office of profit prohibition); Md. Decl. of Rights (1864), Art. 35 (dual office of profit prohibition); Md. Decl. of Rights (1867), Art. 33 (judges prohibited from holding other civil offices); Art. 35 (dual office of profit prohibition); Md. Const. (1867), Art. I, §9 (oath of office); Art. II, §10 (Governor's civil officer appointment authority); Art. II. §15 (Governor's civil officer removal authority); Art. III, §17 (Legislators not eligible for appointment to certain offices); Art. III, §35 (prohibiting extra compensation to a public officer after service has been rendered; and prohibiting increases or decreases in the salaries of certain public officers); Art. III, §52(6) (prohibiting budget reductions decreasing the salary or compensation of a public officer during his or her term of office); Art. XVI, §2 (prohibiting emergency laws creating or abolishing any office or changing the salary, term or duty of any officer).

[18] *See, e.g., Cooking v. Wade*, 87 Md. 529, 541 (1898); *Duncan v. Koustenis*, 260 Md. 98, 105 (1970); *Ashburn v. Anne Arundel County*, 306 Md. 617, 621-22 (1986).

occasional, *Buchholtz v. Hill*, 178 Md. 280, 283-84(1940), and call for the exercise of some portion of the sovereign power of the State, *State Tax Commission v. Harrington*, 126 Md. 157, 159-164 (1915). Among these indicia, the exercise of a portion of the state's sovereignty, at either the state or local level, has proved to be the litmus test for determining whether a position is a public office. Thus, although the members of the Howard County Metropolitan Commission did not receive a commission, did not give an official bond and did not take an oath of office, nevertheless, the Court of Appeals held them to be public officers because it was "apparent, from a reading of the statute, that the duties conferred [on them] by law call for the exercise of a large portion of the sovereign power of government." 232 Md. at 349. Consequently, "the ultimate test was succinctly stated in this fashion: '[A] position is a public office where it has been created by law and casts upon the incumbent duties which are continuing in their nature . . . and call for the exercise of some portion of the sovereignty of the State." *Hetrick,* 222 Md. at 307, quoting *Pressman v. D'Alesandro*, 211 Md. 50, 55 (1956).[19] Although it is not possible to determine whether the members of a particular board or commission are public officers without examining the law that creates that board or commission, as a general rule the members of boards and commissions that exercise quasi-judicial powers are public officers if their decisions are final and reviewable only by the courts. Such is the case with most of the several Montgomery County boards and commissions that exercise quasi-judicial authority.

In spite of the plethora of Maryland caselaw concerning the distinction between a public officer and a public employee, no reported Maryland case addresses the question of whether the term "employee" includes officials when the term "employee" is used in a statute or constitution and is not defined. The Supreme Court of California has concluded that '[t]he term 'employees' has no fixed meaning that must control in every instance." *Knight v. Bd. of Administration*, 196 P.2d 547, 548 (Cal., 1948), citing " *State ex rel. Maryland Casualty Co. v. Hughes*, 349 Mo. 1142, 164 S.W.2d 274; 30 C.J.S., Employee, page 226; 14 Words & Phrases, Perm.Ed., page 357.". Nevertheless, "[i]n the majority of cases in which the question has arisen, constitutional, statutory, or charter provisions referring to 'employees' or 'workman' have been construed as not including public officers or officials." Annot., 5 A.L.R.2d 415 (1949). *See also*, 63A Am.Jur.2d, *Public Officers and Employees* §11.

One such case was *Wharton v. Everett*, 229 A.2d 492, 494 (Del.Super.Ct.1967), *aff'd,* 238

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[19] Over the years, the Attorneys General have opined *ad nauseam* on the distinction between a public officer and a public employee. *See, e.g.*, 74 *Op. Atty. Gen.* 238 (1989) (County Planning Board members are public officers); 68 *Op. Att'y Gen.* 358 (1983) (County Personnel Bd. members and City Park Commissioners are public officials); 61 *Op. Att'y Gen.* 567 (1976); (MAIF Board members are public officials); 50 *Op. Att'y Gen.* 221 (1965) (Home Improvement Commissions are public officers); 48 *Op. Att'y Gen.* 323 (1963) (Zoning Commissioner, Real Estate Commissioner, WSSC members, and County Sanitary Commission members are public officers); 42 Op. Atty. Gen. 86 (1957) (Bd. of License Commissioners members are civil officers); 34 *Op. Atty. Gen.* 176 (1949) (Commissioner of Labor and Industry is a public officer); 18 *Op. Att'y Gen.* 256 (1933) (members of County Bd. of Elections are public officers); Id., at 407 (members of Bd. of Motion Picture Censors are public officers); 2 *Op. Att'y Gen.* 65 (1917) (Public Service Commission members are public officers).

A.2d 839 (Del. 1968), in which the Delaware Superior Court said:

> "Members of boards or commissions in this State, unless provided for otherwise by legislation, are not employees in the usual sense of the word.... Historically they have been regarded as public officers and not public employees."

229 A.2d at 494.[20] Thereupon, the Court held that the plaintiff's husband, though a member of the Industrial Accident Board for which he was receiving annual compensation in the form of a regular monthly salary, was not, at the time of his death, in "covered employment" within the meaning of an Employees Pension Act that defined "covered employment" "as meaning *employment* in which an *'employee'* of the State receives 'a regular salary' wholly or in part from the State." *Id.* (Emphasis supplied.)[21] This principle was applied in *Stiftel v. Malarkey*, 378 A.2d 133 (1977), *rev'd,* 384 A.2d 9 (1977), in which the Court of Chancery of Delaware, New Castle County, quoted *Wharton* and said:

> Since this legal distinction has developed despite the fact that both public officers and public employees work for and are compensated by the State, then consistent adherence to it would seem to dictate that when the General Assembly chooses to use the term "employee" in a statute as part of making, administering and executing the law of the State, it should not be interpreted as also including "public officers" unless it is clearly so expressed.

378 A.2d at 137.[22] *See also, Cool v. Ross*, 396 N.Y.S.2d 76 (N.Y. Sup. Ct., App. Div. 1977) (elected town superintendent of highways who failed to win reelection was not eligible for benefits under federal special unemployment assistance program because he was not an

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[20] While agreeing with the Superior Court's conclusion that members of the Industrial Accident Board were not covered by the Pension Act, the Delaware Supreme Court, in its words, "reasoned the result via a somewhat different route." 238 A.2d at 840.

[21] In pertinent part, 29 Del.C. s 5529 provided:

> The surviving spouse of any employee who has died after having served in covered employment for at least 15 years and who was in covered employment at the time of his death, shall, until the death or remarriage of such surviving spouse, receive a pension equal to one-half the amount which the employee was or shall be entitled to receive if he had retired on the day of his death.

[22] The Supreme Court of Delaware found the principle not applicable to the statute at bar, saying, "The State cites Judge, now Justice, McNeilly's opinion in *Wharton v. Everett*, Del.Super., 229 A.2d 492, 494 (1967), as supposedly holding that the expression "employees" excludes officers. That case, however, does not support the State's view because the statute before Judge McNeilly contained no definition of "employees," and he made clear that legislation could have clarified the meaning." 384 A.2d at 13.

"employee" within meaning of that program);[23] *Common Council of City of Peru v. Peru Daily Tribune, Inc.*, 440 N.E. 2d 726, 732 (Ind. App., 1982) (Members of city utilities service board were "public officers"and not "employees" for the purpose of an Open Door Law exception for "interviews with prospective employees");[24] *Turner v. Cole*, 559 S.W.2d 170, 173 (Ky. App. 1977) (in view of the fact that the city council did not use the phrase "employees and officers," civil service ordinance to all "employees" did not apply to the chief of police because he was an "officer" and therefore not an "employee"); *Sauls v. Tangipahoa Parish School Bd.*, 300 So. 2d 304, 305 (La. App., 1973) (school superintendent is neither a teacher nor an employee within meaning of sick leave law; rather, a superintendent is a "public officer"); *Union Township of Montgomery County v. Hays*, 207 N.E.2d 223 (Ind. App., 1965) (a public officer is not an "employee" for the purposes of the Workmen's Compensation Act). *But see, Knight v. Bd. of Administration, 196 P.2d 547 (Cal., 1948)* (constitutional provision empowering the legislature to provide for the payment of retirement salaries to "employees" used the word in such a comprehensive sense as to include state legislators, notwithstanding that they were public officers); *State ex rel. Hill v. Sinclair*, 175 P. 41 (Kan, 1918) (notwithstanding the fact that he was a public official, a superintendent of schools was an "employee" within the meaning of a statute giving the board of education authority to remove any of its "employees").

Accordingly, in the light of the significant history of distinguishing between employees and officials in Maryland's constitutional, statutory and common law, and the failure of the General Assembly to define the term "employee" for the purposes of the Local Government Employees Political Activities Law, there is ample basis for construing that law as not applying to county officers, such as the members of county quasi-judicial boards and commissions. Indeed, we understand that the Attorney General's Office has given informal oral advice that the State Employees Political Activities Law apply only to state employees and not to state officers. However, notwithstanding the well established distinction between employees and officials, the question presented by the Local Government Employees Political Activities Law is very much a question of first impression and, given the total absence of any legislative history for this

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[23] "The existence of an employer-employee relationship is dependent upon the amount of control involved in respect to the manner in which the work is to be done. An employee is instructed as to the way he does his work as opposed to an independent contractor who uses his own discretion. * * * Herein, claimants are elected officials for a stated term with statutory powers (Highway Law, art. VII) which may not be abrogated or diminished. They are public officials charged with statutory duties involving the exercise of judgment and discretion which cannot be delegated. While acting officially pursuant to powers statutorily conferred, they proceed independently of any control or direction of the Town except in those limited areas noted above. As elected officials, they must carry out the duties which the statute mandates and are not free to take instruction from the town board as to how they shall perform those duties. They are not employees within the meaning of section 3121 (subd. (d)) of the Internal Revenue Code of 1954 (U.S.Code, tit. 26, § 3304 note, Special Unemployment Assistance Program, § 210, subd. (c), par. (1))."

[24] *Inter alia*, the Court observed, " [I]t is important to recognize what the statute does not say as well as what it does say. When certain items or words are specified or enumerated in the statute, then, by implication, other items or words not so specified are excluded. [Citation omitted.]" 440 N.E.2d at 729.

particular statute, our construction cannot be free from doubt. The courts well might find that there is no basis for distinguishing between employees and public officers for the purposes of this law, and thus construe the statute to prevent the County from restricting the political activities of members of boards and commissions. Accordingly, the only way to proceed with certainty, absent a dispositive court decision, is to obtain clarifying state legislation.

III.
COUNTY LAW

Prior to 1982, the Charter of Montgomery County prohibited most county employees and officers from participating in political campaigns. Section 405 provided:

> No *officer or employee* of the County whose salary or expenses are payable in whole or in part from County funds shall participate in any campaign for any political or public office. This prohibition shall not apply to an elected officer, or a person appointed to fill an elected vacancy, or a member of a board or commission unless otherwise provided in the charter.

(Emphasis supplied.) In 1982, the Charter Review Commission recommended amending 22 sections of the Charter and deleting 14 of the Charter's 17 transitional provisions in order to bring the Charter into conformity with State law and to remove outdated, inaccurate, and inconsistent provisions. In pertinent part, the proposed changes included:

> delete Section 405's prohibition against political activity by County *employees* which was pre-empted by Chapter 796 of the Laws of Maryland and provide instead that no *employee* shall be prohibited from participating in politics or political campaigns, however, no *employee* shall be obligated to contribute or render political service . . . .

1982 Report of the Charter Review Commission (May 1, 1982), p. 17. (Emphasis supplied.) The Commission explained its recommendation as follows:

> The Commission proposes deletion of Section 405's prohibition against participating in politics or political campaigns by County *employees* in order to conform with state law. In 1973, the General Assembly enacted a law to provide that participation in politics and political campaigns by state and local government *employees* may not be prohibited (Chapter 796 as codified in Sections 28-1 and 28-2 of Article 33 of the Annotated Code of Maryland. [Footnote omitted.] The Commission's proposed amendment provides that no County *employee* shall be prohibited from participating in politics or obligated to contribute to an election campaign or to render political service. This provision is consistent with a provision of the 1973 state law. Section 408 of the Charter already provides that County *employees* "shall devote their entire time during their official working hours to the performance of their official duties."

Report, p. 30. (Emphasis supplied.)

Thus, Section 405 was amended to read as follows:

> No *officer or employee* of the county shall be prohibited from participating in politics or political campaigns; however, no *employee* shall be obligated to contribute to an election campaign or to render political service.

(Emphasis supplied.)

Seven years later, in connection with the consideration of an emergency bill concerting political activity by members of the Ethics Commission, this Office responded as follows to the comments of legislative counsel:

> Legislative counsel state, "While the issue is not free from doubt and more research would be useful, we conclude that Charter Section 405 prohibits the Council from restricting political activity by members of the Ethics Commission except through a charter amendment." While we agree with legislative counsel that there may be room for debate on this issue, we conclude that the Charter does not restrict the Council from prohibiting members of the Ethics Commission from engaging in political activity.
>
> The 1982 Report of the Charter Review Commission indicates that the present wording of Charter Section 405 was proposed in order to conform with state law. State law mandates that the state and it political subdivisions must not prohibit an employee from participation in politics or a political campaign. The state law in question is limited to employees. The term "employee" generally is understood to mean a person who receives compensation in exchange for services and who is subject to supervision. In light of this general understanding of the term, we believe that the 1982 amendment to Section 405 was not intended to limit the authority of county government to adopt legislation regulating the political activity of members of boards and commissions.
>
> Legislative counsel point out that, prior to 1982, Section 405 prohibited activity by officers and employees at the County except elected officials and members of boards and commissions. Legislative counsel conclude that it would, therefore, be anomalous to construe the Charter to withdraw a right previously enjoyed by one group while extending the same right to all other appointees and employees. We disagree. Old Section 405 did not guarantee that members of boards and commissions would be free from a legislative limitation on their political activity. Old Section 405 simply did not include members of boards and commissions within the mandatory prohibition. Accordingly, we believe that, prior to 1982, the County by legislation could have prohibited members of boards and commissions from

engaging in political activity.

November 13, 1989 memorandum to the County Council, pp.1-2.

Like the Local Government Employees Political Activities Law with which it was intended to conform, Section 405 does not define the term "employee" or otherwise indicate whether the term includes members of boards and commissions. Thus, although we continue to advise that Section 405 may be construed not to prohibit the regulation of the political activities of members of county boards and commissions that have quasi-judicial authority, we must caution that this matter too is not free from doubt, especially in light of Section 405's use of the terms "*officer or employee*." Thus, the only way to proceed with certainty, absent a dispositive court decision, is to amend the Charter appropriately.[25]

We trust that this advice is fully responsive to your request and of assistance.

[25] Such an amendment could either repeal Section 405 *in toto*, thereby leaving the matter entirely to state law, or add a provision expressly permitting the regulation of the political activities of members of county boards and commissions that have quasi-judicial authority.