

**CITY OF BIRMINGHAM  
BOARD OF ETHICS  
ADVISORY OPINION 2007-02**

**DECISION**

**March 22, 2007**

**QUESTION PRESENTED**

May a member of a City advisory board express disagreement with the decision of the City Commission on a matter that came before the advisory board without violating the Ethics Ordinance's requirement that City Officials not take actions which adversely affect the confidence of the public in the integrity of City government?

**ANSWER**

Yes.

**ANALYSIS AND DISCUSSION**

Terence Gates, a member of the Parks and Recreation Board, has requested an advisory opinion from the Ethics Board. Mr. Gates is a licensed professional engineer who claims to have expertise in driver visibility for automobiles, including windshield wiper systems, lighting and windshields. The Parks and Recreation Board was one of six City Boards that considered where the exit for the proposed Shain Park underground parking garage should be located. Mr. Gates voted along with his colleagues on the Parks and Recreation Board to advise the City Commission to locate the exit on Henrietta Street. The City Commission voted 5-2 to locate the exit on Bates Street. Mr. Gates strongly disagrees with that decision based on his professional knowledge.

Mr. Gates believes he has a dilemma caused by Section 2-323 (V) of the City's Ethics Ordinance which provides that City Officials should avoid any action which might result in or create the appearance of affecting adversely the confidence of the public or the integrity of the City government. Mr. Gates is concerned that under his profession's Code of Ethics he must stand by his strongly held opinion that the approved location of the exit is unsafe and that the opinions he has expressed on this question could be used to demonstrate that the City made a dangerous decision. Additionally, Mr. Gates questions what he should do if he is called upon to be an expert witness in a case against the City should an injury occur to a pedestrian by a car exiting the parking garage.

None of Mr. Gates past actions as disclosed to and reviewed by the Board of Ethics, violate the City's Ethics Ordinance. Birmingham's municipal government depends upon knowledgeable citizens of diverse backgrounds volunteering for service on City Boards. The Ethics Ordinance encourages them to act independently. Ethics Ordinance Section 2-323 (III). It is perfectly proper for Mr. Gates to express his opinions on matters that come before the Parks and Recreation Board, at the Board or even, as he did, to the City Commission. Nothing in the Ethics Ordinance says otherwise. Mr. Gates appears to hold the same opinion as the two City Commissioners who voted against the Bates Street exit. If City officials cannot express opinion, debate the merits of those opinions and vote their consciences, the quality of our City's democracy would be significantly impaired.

There are too many uncertainties to allow the Ethics Board to render an advisory opinion on the hypothetical question of whether Mr. Gates could be an expert witness in an injury claim against the City. Among them are:

The underground parking structure has to be built; and

The exit from the structure has to be located where it is currently planned; and

An accident has to occur; and

The accident has to be caused by a flaw in the location of the exit, not from another cause; and


One of the parties has to seek Mr. Gates testimony; and

The court will have to conclude that Mr. Gates' expertise, which relates to driver visibility from inside a car, is pertinent.

We do wish to point out that should all of this come to pass, and should Mr. Gates then still be a City official, Section 2-324 (A) (VI), if it remains unchanged, provides some guidance. If Mr. Gates is offered employment as an expert witness, which he believes would be "incompatible or in conflict with the discharge of his official duties", he could either choose to decline the expert witness engagement, resign his City position, or request further guidance from the Board of Ethics.

Approved by the Birmingham Board of Ethics, this 5<sup>th</sup> day of April, 2007.

  
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John J. Schrot, Jr., Chairperson

  
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James D. Robb

  
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Sophie Fierro-Share