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## Memorandum

**To:** Edward Koryzno, Ypsilanti City Manager  
**From:** John M. Barr, Ypsilanti City Attorney  
**Date:** 2/18/2008  
**Re:** Councilmember asking staff to talk to appointed board to request the board change their position

You have requested that I review the propriety of a councilmember, at a council meeting, asking staff to contact the Historic District Commission (HDC), an appointed board to request that the board change their position on a pending matter.

I have previously opined<sup>1</sup> that it is improper for a councilmember to appear before a council-appointed board to address an item where the council member has a personal interest. Also that it would be best practice for a council member to abstain from such appearance whether there was a personal interest or not, to avoid the appearance of impropriety.

In my previous opinion I mentioned the three main Michigan cases on this issue. Two of the cases indicate that a member of the appointing body should not take a position with an appointed board. The rationale is that the board members are public officers with a public trust and pressure from an appointing board could create doubt in the public mind as to the impartiality of the board. This is especially true if the council member has a pecuniary interest in the matter.<sup>2</sup>

<sup>1</sup> Opinion dated 4-19-07

<sup>2</sup> Abrahamson v Wendell, 72 MA 80 (1976); Barkey v Nick, 11 MA 381 (1986)



The third case<sup>3</sup> however holds that it is not duress *as a matter of law* for an appointing member to address a board and ask for certain action, if the appointing member does not have a personal, pecuniary interest in the matter. The court left the door open to find actual duress in such a situation if the specific facts warranted it.

Council members are elected to use their independent judgment for the public good. However boards are appointed to also use their independent judgment for the public good.

City Council and appointed boards have different responsibility and powers in keeping with the separation of powers doctrine. The power of City Council is derived from the Michigan Home Rule Act (MCL 117.1 et seq.) and the City Charter. Council is elected to appoint a city manager (Charter section 4.01) and to act as the legislative body of the city (City Charter section 2.01). The HDC is a statutory body authorized by state law (MCL 399.201 et seq.) and created by city ordinance (Code section 54-51). The HDC is appointed to act as an administrative, quasi-judicial body to rule on work requests in the historic district. The statute gives the HDC certain powers that City Council does not have. The statute in section 5 provides that the city itself must apply for approval of work requests with the HDC for work within the historic district. Decisions of the HDC can be appealed to the Michigan historical commission. There is no provision for the HDC to change a decision on request of City Council. Accordingly Council collectively or individually may not legally dictate action to the HDC.

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<sup>3</sup> DOT v Township of Kochville, 261 MA 399 (2004)