



Rushern L. Baker
County Executive

Robin Barnes-Shell
Executive Director

THE PRINCE GEORGE'S COUNTY GOVERNMENT BOARD OF ETHICS

The Honorable Covette Rooney, Chair
Cassandra Burckhalter, Member
Curtis Eugene, Member
Sharon Theodore-Lewis, Esq., Member

BOARD ADVISORY OPINION

June 26, 2017

Case #AO-17-0215

The Board of Ethics (“the Board”) was notified that the Office of Ethics and Accountability (OEA) received a written request regarding ethical concerns that may arise from an Executive Director of a County Board/Commission seeking to campaign for an elected office within the County while continuing to serve in his/her role with the Board/Commission.

BACKGROUND

The Commission in question acts as the civil rights agency for the County, processing and investigating alleged acts of discrimination within the County. All of the members, as well as the Executive Director are appointed by the County Executive and confirmed by the County Council. The Commission has the power to investigate and hold hearings involving allegations of discrimination by a County employee or agency. The Commission has been authorized to administer oaths, issue subpoenas, and compel the attendance of witnesses, the production of records and documents and to compel the taking of interrogatories and depositions. Within its discretion and upon a finding of a violation, the Commission has the authority to impose a wide range of remedies to include but not limited to referring matters for court action to the Office of Law, issue cease and desist orders, order monetary awards and impose civil fines.

The Executive Director’s duties include supervision of the administrative staff and advising and assisting the Commission in its daily functions. The Executive Director also has the power to dismiss complaints filed with the Commission, mediate disputes between parties, and dismiss a complaint if in the Director’s belief one party is not engaging in good faith (with the exception of complaints involving housing complaints). In circumstances in which a matter cannot be settled, it is the Executive Director who is tasked with litigating the matter before the Commission.

ANALYSIS

The Prince George's County Code of Ethics (the "Code of Ethics") is intended to govern the actions of elected officials¹, appointed officials, and employees. The Code of Ethics seeks to ensure that trust is not eroded and that there is no improper influence, actual or the appearance thereof, in County Government. The Code of Ethics is contained in Subtitle 2 Division 17² of the County Code. The Code of Ethics states:

The Prince George's County Council, recognizing that our system of representative government is dependent in part upon the people maintaining the highest trust in their public officials and employees, finds and declares that the people have a right to be assured that the impartiality and independent judgment of public officials and employees will be maintained. It is evident that this confidence and trust is eroded when the conduct of the County's business is subject to improper influence and even the appearance of improper influence. For the purpose of guarding against improper influence, the County Council enacts this Code of Ethics to require County elected officials, officials, employees, and individuals appointed to boards and commissions to disclose their financial affairs and to set minimum standards for their conduct of local business. It is the intention of the Council that this Division, except its provisions for criminal sanctions, be liberally construed to accomplish this purpose. (emphasis added).

The stated purpose of the Code of Ethics is to ensure and maintain the highest trust in government and its public officials and employees. The Code of Ethics seeks to ensure that trust is not eroded and that there is no improper influence, actual or the appearance thereof, in County Government. The Code of Ethics goes on to define how to comply with the purpose of the Code.

First, as a general rule, gifts³ offered by controlled donors⁴ may not be accepted unless it falls within one of the permitted exceptions of the Code of Ethics. The definition of a gift does not include the solicitation, acceptance, receipt or regulation of political campaign contributions regulated in accordance with the provisions of the Article 33, Sec. 26-1 et seq., Annotated Code of Maryland, or any other provision of State or local law regulating the conduct of elections or the receipt of political campaign contributions. Campaign contributions are covered by the Maryland Campaign Finance Laws and reported as part of the required annual Campaign Finance Report and are exempt from coverage under the County's Code of Ethics. This Board has no legal authority to determine whether or under what circumstances campaign contributions may be accepted. Likewise, because the question involves "political activity," an analysis of Section 909 of the Prince George's County Charter and Section 16-234 of the Personnel Code is required.

¹ Elected official means any individual who holds an elective office of the County. Elected official does not include the Sheriff, State's Attorney, Register of Wills, or Clerk of the Court. Prince George's County Code of Ethics, §2-291 (2017).

² *Id.* §2-290 Statement of Purpose and Policy

³ *Id.* §2-293(d) Solicitation or Acceptance of Gifts

⁴ A controlled donor is any person or entity that matches any one of the descriptions listed in §2-293(d)(3) of the Prince George's County Code of Ethics.

However, this Board's authority to assist in the interpretation of statute is limited to the Code of Ethics. Therefore, contact should be made with the Office of Law (OOL) for additional advice not contained herein.

The Board does however have the authority to provide advice as to other possible implications of the Code of Ethics that may arise from the acceptance of contributions from individuals who have matters before the Commission. The purpose of the Code of Ethics is to guard against improper influence and the appearance of improper influence as well as to assure that the impartiality and independent judgment of public officials and employees be maintained. The acceptance of campaign contributions from individuals who have pending or recently resolved matters before the Commission or from individuals or businesses who do not yet have a matter before the Commission but circumstances are such that it can reasonably be inferred that filings with the Commission or Executive Director are imminent, may create the appearance of impartiality or improper influence.

Campaign contributions to the Executive Director by someone who has a matter before the Commission could raise questions as to the level of fairness and/or impartiality of judgment in the handling of a particular matter. While we do not assert that the fairness or judgment of either the Executive Director or any members of the Commission would be compromised, the overlapping nature of the Director's personal political activity and the actions of either the Commission or the Executive Director in their official capacity, could lend to the appearance of such. An inference could be made that the Executive Director's actions in a particular Commission matter could be affected by the contribution or lack thereof to his political campaign. The integral role of the Executive Director in Commission matters requires that at all times their actions are in accordance with what the applicable laws and facts of a particular matter may dictate. The acceptance of contributions by any party involved in a complaint could call into question the Director's motives for taking a particular course of action. From a public trust perspective a contribution could give the appearance that the donating party received an advantage as a result of those contributions. It could be inferred that the campaign contributions are an effort to influence the Executive Director and by extension, the Commission.

Secondly, Section 2-293(c), Use of Prestige of Office, of the Code of Ethics states that an official or employee may not intentionally use the prestige of his office for his own private gain or that of another. The performance of usual and customary constituent services does not constitute the use of the prestige of office. Constituent services are those services performed without bias or favoritism offered to others similarly situated on an equal basis without additional compensation. This provision has been interpreted as prohibiting the County from endorsing or promoting commercial activities. As a County employee an Executive Director would be prohibited from using the prestige of their County office and title or any reference to his position with the County in literature, solicitations, advertising and other materials to assist in promoting his personal political activities. Use of biographical information however would be permitted. The Executive Director would be prohibited from using their County position as a tool to attract contributions to their political campaign. The very nature of the Executive Director's public position with the Commission in question and the role of the Commission in County affairs requires interaction with various individuals of all levels of government as well as in the public and private sector. It may be difficult for many people to separate the Executive Director's political activities from their

association with the County and the Commission thus, it could lead to confusion as to whether they were acting in an official capacity as a County employee or merely acting as a private citizen. It would be incumbent upon the Executive Director to exercise great care at all times to ensure that all persons they engage in relation to their political activities understands that they are not acting in their capacity as an official of the County.

Furthermore, §2-293(f) of the Ethics Code would also prohibit the Executive Director from using County time or any other resources of the County for personal gain. This prohibition would extend to the use of County stationery, phones, office space and telephone numbers that are paid for or synonymous with the County. Lastly, under §2-293(g) of the Ethics Code, the Executive Director would be prohibited from disclosing confidential information or using that information for non-county business which was acquired by reason of his position with the County and which is not available to the public. This would include access to personal information such as phone numbers, emails and addresses of contacts obtained in connection to the carrying out of duties as a County employee.

CONCLUSION

The Code of Ethics is to be liberally construed to accomplish the purpose and policy set forth by the law. One of the primary purposes is to avoid improper influence or the appearance of improper influence of public officials and employees. In reaching this opinion the Board of Ethics has relied upon facts as presented by you and other information made reasonably available to the Board. There is no County policy or law that currently prohibits or restricts campaign contributions from persons doing business with the County. Nor is there any prohibitive language in the bylaws of the Commission that prohibits such contributions. The Code of Ethics specifically excludes campaign contributions from the definition of "gifts" which do have specific restrictions. Notwithstanding this point, a party to a matter before the Commission making contributions to the Executive Director of the Commission who exercises a great deal of authority on matters before the Commission, could give rise to the appearance of or an actual conflict of interest. Many times when there is an allegation of improper conduct by an official, the exchange of money is an essential part of the allegations. To avoid such conflicts, it is recommended that the Executive Director refrain from receiving contributions from anyone who has business before the Commission or has recently had business before the Commission within the 12-18 months from the date of their filing for candidacy. To assist in avoiding such conflicts, they may also wish to impose some sort of disclosure requirements on potential donors.

As mentioned above, the Board finds that a specific request for guidelines regarding the acceptance of campaign contributions falls outside of the jurisdiction of the Board. As such, the State Board of Elections should be contacted for further guidance. It is further advised that that on such matters, the Office of Law should be consulted regarding permissible political activity by an Executive Director of a County Board/Commission.


Covette Rooney
Board Chair