



THE PRINCE GEORGE'S COUNTY GOVERNMENT BOARD OF ETHICS

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MEMORANDUM

DATE: January 23, 2015

TO: [REDACTED]

FROM: Covette Rooney, Board Chair /s/
Board of Ethics

RE: Advisory Opinion #15-0072 – Fundraising

You have inquired as to the ethical implications of the County's involvement with the Prince George's County Public Safety luncheon (Valor Awards luncheon). Your inquiry raises several issues in the areas of prohibited conduct and interests, specifically, use of prestige of office, solicitation, and use of County resources.

Background

The facts as set forth in the emails and attachments provided to this office on December 16, 2014, December 31, 2014, and January 7, 2015, are as follows:

Each year the County hosts the Valor Awards luncheon which honors medal of valor and other distinguished honorees from the five public safety agencies. Numerous corporate sponsors support this event and proceeds from the award luncheon go to the County's Food Basket Program, which is run by the Prince George's County Public Safety Assistance Program, Inc. (the Program). The Program is a 501(c)(3) non-profit organization, whose purpose is to provide Christmas dinner to as many underprivileged families in the County as possible and to provide relief on a case-by-case basis to families or persons in the County in emergency situations. The Program has been in existence since 1984 and received its 501(c)(3) status from the Internal Revenue Service in 2000. No salaries are paid out of the grants and donations that are received for the Christmas food basket program or the Valor Awards luncheon. The five public safety agencies involved in the Valor Awards luncheon include the Department of Corrections, Police

Department, Fire/EMS, the Sheriff's Office, and Public Safety Communications/Homeland Security.¹ The involved agencies take turns hosting the event on a yearly basis. This year, the Sheriff's Office will be hosting the 2015 Valor Awards luncheon. In 2014 the event was hosted by the Fire Department. The list of sponsors included approximately 40 entities, a great number of which did, and continue to do, business with the County.

Coordinators of the event first meet in January at the lead agency to plan and organize the luncheon. A sponsor is usually contacted by the public safety agency it does business with during the year. Employees typically contact sponsors by email, phone or mail. This is normally done during work hours. A flyer listing and explaining the types of sponsorship levels is sent to the prospective sponsor. Sponsorship levels range from "Platinum Patron" to "Patron Sponsor" and provide for group seating and an opportunity for advertising. An individual ticket to the Valor Awards luncheon is priced at \$40.00 and includes a meal and admission to the event. For sponsors, the cost of an individual ticket is \$50.00 and includes admission, the meal and a donation. With the exception of the meals that are paid for the honorees, all proceeds from the Valor Awards luncheon go directly to the Program. The proceeds are used to assemble food baskets for the needy. No salaries are paid out of the donations that are received for the Valor Awards luncheon. The Valor Awards luncheon is held off-site at a local restaurant. The restaurant does not receive any proceeds from the Valor Awards luncheon except that which comes from meals purchased on behalf of an awardee and his/her guest. In years past, the number of honorees has averaged between 35 and 40 people. The awards are purchased by each honoree's respective agency and range between \$50 and \$60.

Applicable Law

Sec. 2-290. Statement of purpose and policy.

- (a) 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.
- (b) For the purpose of guarding against improper influence, the County Council enacts this Code of Ethics to require County elected officials, officials, employees, and

¹ The Prince George's County Ethics Code prohibits County officials and employees from engaging in certain conduct and interests. Under the Ethics Code, the term "employee" does not include an employee of the Office of the Sheriff. The Sheriff's Department is a State Constitutional Office and a unit of State Government. As such, the opinion expressed herein is limited to the Department of Corrections, Police Department, Fire/EMS, and Public Safety Communications/Homeland Security. The Sheriff's Office is encouraged to seek advice from the State Ethics Commission regarding the ethical implications of its involvement in the Valor Awards. See Prince Georges' County Code § 2-291(a)(4.2)(A) (2014); and Kline v. Fuller, 56 Md. App. 294, 467 A.2d 786 (1983).

individuals appointed to boards and commissions to disclose their financial affairs and to set minimum standards for their conduct of local business.

- (c) It is the intention of the Council that this Division, except its provisions for criminal sanctions, be liberally construed to accomplish this purpose.

Sec. 2-293. Prohibited conduct and interests.

- (c) **Use of Prestige of Office.** 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, without additional compensation, does not constitute the use of the prestige of office for an elected official's or employee's private gain or that of another.

(d) Solicitation or Acceptance of Gifts.

- (1) An official or employee may not solicit any gift....
- (3) No official or employee may knowingly accept any gift, directly or indirectly, from any person that he knows or has reason to know:
 - (A) Is doing business with or seeking to do business with the Council, as to members thereof, or, as to other officials or employees, with their office, agency, board, or commission;
 - (B) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his official duty; or
 - (C) Is engaged in an activity regulated or controlled by the official's or employee's governmental unit; or
 - (D) Is a lobbyist with respect to matters within the jurisdiction of the official or employee.

- (e) **Use of Resources.** An official or employee may not use employees on County time or any other resources of the County for writing books, articles, and speeches which would result in personal gain or compensation or for any other personal matters and services.

Analysis

In applying the provisions of the Ethics Code to the facts of the instant case, there are three provisions that are relevant to your inquiry as an employee or official of the County. First, Section 2-293(c) of the Ethics Code prohibits a County official or employee from intentionally using the prestige of his office for his own private gain or that of another. Secondly, Section 2-293(d) of the Code prohibits a County official or employee from soliciting any gift, and prohibits the acceptance of a gift from “controlled donors.”² A gift is defined by Section 2-291(a)(6) as the transfer of anything of economic value regardless of the form without adequate and lawful consideration. Thirdly, Section 2-293(e) prohibits a County official or employee from using employees on County time or any other resources of the County for writing books, articles, and speeches which would result in personal gain or compensation or for any other personal matters and services. Taken together, these provisions would appear to mean that a public safety employee may not, in his or her official capacity, plan or organize the Valor Awards luncheon nor solicit funds from its invitees for the food basket program run by the Public Safety Assistance Program, Inc. However, exceptions to these rules may be allowed when a fundraising effort is officially sponsored and approved by the County Executive for the benefit of County citizens. Solicitation of donations and support for a public safety program that benefits the public is similar to fundraising efforts such as the United Way and food collection. County employees are permitted, under certain circumstances, to solicit gifts to promote programs that fulfill the County's public purposes, as long as the beneficiaries of the solicitation are members of the public.³

In the instant case, although public safety employees send out invitations, programs, and flyers with the names of participating agencies and the County logo, as well as emcee an event honoring their own during business hours, the contributions (gifts) made by the corporate sponsors in attendance, go directly to the Program, whose mission is to provide food baskets to County residents. The gifts are not being solicited by County employees for their own use or for the use of other County employees; the solicited funds are to be used for the purchase of food that will be given to needy families displaced from their homes by fire or other emergency. It is important, however, to put measures in place to ensure entities doing business with the County do not feel obliged or pressured to contribute to the fundraising efforts. If public safety agencies follow certain guidelines to avoid the appearance of impropriety, the Valor Awards luncheon may be permissible under the Ethics Code.

² With few exceptions, a County official or employee may not accept a gift from a “controlled donor.” A controlled donor is a donor doing business or seeking to do business with the County; has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his official duty; is engaged in an activity regulated or controlled by the official's or employee's governmental unit; or is a lobbyist with respect to matters within the jurisdiction of the official or employee. Prince George's County Code § 2-293(d)(3).

³ This is the position taken by ethics commissions in neighboring jurisdictions. Both the Anne Arundel County and Montgomery County Ethics Commission, which have similar ethics laws to that of Prince George's County, have opined that under certain conditions, their respective county executive, may authorize the county government to promote a charitable event sponsored by a private entity, but only if the event will benefit county citizens. See Anne Arundel Ethics Commission, AO-99-175; and Montgomery County Ethics Commission, AO-12-04-006.

These guidelines are as follows:⁴

- a. Written authorization from the County Executive officially sponsoring and approving the charitable event, and stating the legitimate County interest to be served;
- b. Gifts for the benefit of County employees may not be solicited – only gifts that promote the County’s programs and benefit its citizens may be solicited;
- c. Unsolicited gifts to the County from controlled (or prohibited, or regulated) donors must be used only for the benefit of the public, not for the benefit of any County employee;
- d. County contractors and vendors and other controlled donors may not be specially targeted for solicitations because of the perceived pressure upon them to give and because of the expectation that they will receive favored treatment in the future;
- e. Solicitations for gifts to the County to any donor should be open to the public or at least to the public safety business community to reduce the appearance of favoritism, endorsement or coercion. Potential donors must be informed that contributions are purely voluntary; and
- f. Free advertising for controlled donors and other sponsors must include on the page the same disclaimer.

Conclusion

The purpose of the Ethics Code is to assure that the impartiality and independent judgment of public officials and employees will be maintained. Prince George’s County Code § 2-290(a). The Code sets minimum standards for employees to follow to maintain impartiality and independent judgment in conducting local business. Three of these minimum standards are the use of prestige of office, the prohibition on solicitation or acceptance of gifts, and the use of County resources as set forth in Section 2-293. However, the Code permits the acceptance of some gifts where the acceptance would not impair the impartiality and independence of judgment of the official or employee, or give the appearance of doing so, or be designed to do so. In addition, where a gift neither benefits an employee personally or professionally but instead serves to benefit the public, solicitation and use of prestige of office may be permitted under certain conditions. Considering the intended purpose and use of the solicited donations in the instant matter, it is the opinion of this Board that the Valor Awards luncheon does not violate the intent of the Ethics Code and may be held by the public safety agencies as part of a County-wide public benefit service, if the County Executive officially sponsors and approves the fundraising efforts, and the above-mentioned guidelines are implemented.

⁴ *Id.*

I trust the information provided herein will assist you in your future endeavor. If you have any questions or need further information, please contact the Office of Ethics and Accountability at 301-883-3445.