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THE PRINCE GEORGE'S COUNTY GOVERNMENT BOARD OF ETHICS

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

BOARD ADVISORY OPINION

April 5, 2017

Case# AO-17-0135

The Board of Ethics ("the Board") received a written request for advice regarding potential ethical issues that may arise from a Prince George's County Council Member receiving campaign contributions from consultants that also perform work on behalf of the County Council or the County Executive's office. Although the request sought guidelines for the County Council as a whole, the County Executive's Office, and the consultants, the focus of this advisory opinion is limited only to the requestor, as neither the County Council, the County Executive, nor the consultants requested an advisory opinion.

The County Council ("Council") employs consultants to assist them in various areas. Based on the information provided by the County Administrator, ("Administrator"), when the Council requires the services of a consultant, the Council's Chair and Vice-Chair will direct the Administrator as to the type of consultant needed at which point the Administrator and other members of the administration staff take over the matter and oversee the process of acquiring the consultant. The administration staff is responsible for locating potential consultants, requesting bids and ultimately negotiating and signing the contract with the selected consultant. The Council's only role in the process is to direct the Administrator to start the process. After a consultant is hired, reviews of their work, progress reports and invoices for payment are exclusively handled by the Administrator or someone from his staff.

The Board was advised that only the Council Chair is made aware of and actually participates in the negotiations of contracts with consultants hired to assist the Council. The hiring of consultants is not reviewed or voted on by the Council, nor is the Council required to approve the contract. Notwithstanding this, the remaining members of the Council can obtain the names of the parties that have been contracted with on its' behalf.

During the most recent campaign finance reporting period, January 2016 through January 2017, the requestor's campaign received contributions from consultants that are currently doing business with¹ the Council. The requestor reported receiving a campaign contribution from the

¹Doing business with means:(A) Having or negotiating a contract that involves the commitment (either in a single or combination of transactions) of Five Thousand Dollars (\$5,000.00) or more of County or County-controlled funds;

Law Office of Stan Derwin Brown LLC. The managing member of the law office is Stan Brown, the appointed People's Zoning Counsel for Prince George's County. Mr. Brown was first appointed to the People's Zoning Counsel in 1998 and continues to serve in that capacity. The power to appoint the People's Zoning Counsel belongs exclusively to the County Executive. The Prince George's County Charter Section 712, requires the compensation received by the People's Zoning Counsel to be included as part of the County's annual budget. Section 27-136 of the County Charter, states the duties of the zoning counsel is to be independent and "protect the public interest and promote a full and fair presentation of relevant issues in administrative proceedings in order to achieve balanced records upon which sound land use decisions can be made." As a part of their duties, the People's Zoning Counsel regularly appears before the Council.

The requestor also reported campaign contributions from Gerard E. Evans, LTD, a lobbying and government relations firm. The firm is owned by Gerard E. Evans. Mr. Evans in his individual capacity registered with the Maryland State Ethics Commission as a lobbyist on behalf of the Council, covering the time frames of November 16, 2015 through October 31, 2016 and January 9, 2017 through October 31, 2017, to represent the Council on any and all issues affecting the Council related to planning and zoning. Mr. Evans based on the information contained within the Lobbyist Activity Reports filed with the State Ethics Commission, has reported receiving \$38,000, to date in compensation for services rendered to the Council. Mr. Evans has also registered as lobbyist with the Prince George's County Office of Ethics and Accountability (OEA) in calendar years 2013, 2016, and 2017, on behalf of other clients.

Lastly, the requestor received a campaign contribution from Strategic Solutions Center, LLC. Strategic Solutions' president and CEO is Major Riddick. Mr. Riddick has registered with the Maryland State Ethics Commission on behalf of the Council every year since 2011, in matters concerning County government. Mr. Riddick has reported in his Lobbyist Activity Reports receiving \$409,500, to date in compensation for services rendered to the Council. Mr. Riddick and/or his firm has also registered as a lobbyist with OEA in calendar years 2013, 2014, and 2015, on behalf of other clients.

APPLICABLE LAW

The Prince George's County Code of Ethics (the "Code of Ethics") is intended to govern the actions of elected officials², 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.

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

or (B) Being regulated by or otherwise under the authority of the County; or (C) Being registered as a lobbyist in accordance with Section 2-295 of this Division. *See* Prince George's County Code of Ethics §2-291(a)(4).

² 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, Section 2-291.

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 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) Solicitation or Acceptance of Gifts.

- (1) An official or employee may not solicit any gift....
- (2) 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.

ANALYSIS

As a general rule gifts offered by controlled donors may not be accepted unless it falls within one of the permitted exceptions of the Code of Ethics. Pursuant to Section 2-291(6), the definition of a gift does not include the solicitation, acceptance, reception 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. Contributions are 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 a campaign contribution may be accepted by County elected officials, including County Council members. For the reasons stated the Board cannot opine as to whether any member of the Council should be prohibited from accepting campaign contributions from a consultant that has made a contribution to that Council Member's campaign.

However, the Board does have the authority to provide advice as to other possible implications of the County Code of Ethics that may arise from the acceptance of contributions. 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 public's trust and confidence is eroded when there is an appearance of improper influence. The acceptance of campaign contributions from individuals who are also the recipients of a County contract can create the appearance of impartiality.

The Council has hired two lobbyists to act on its behalf. As indicated above, one of those lobbyists, Major Riddick and his firm Strategic Solutions has had a contractual relationship with the Council dating back to January 2011 and that relationship has continued into the present day. The other, Gerard Evans and his firm Gerard E. Evans LTD, has also had a contractual relationship with the Council since November 2015. The Council and the individual Council members' business relationship with the lobbyists is multileveled. There have been periods of time in which both lobbyists have been simultaneously representing other clients and representing the Council. Mr. Riddick was registered with the OEA as a lobbyist representing other clients in 2013, 2014 and 2015. He was also representing the Council. Mr. Evans was registered as a lobbyist in 2016 and 2017. He too was representing the Council. Mr. Riddick is not currently registered as lobbyist with OEA, however Mr. Evans is currently registered and both lobbyists have current contracts with the Council. Those firms have also made campaign contributions to you.³ Each of those contributions were reported as being made in the name of the lobbyists' respective firms. The Maryland State Ethics Commission does not distinguish between a lobbyists acting in their individual capacity or others acting at the direction of the lobbyist for the purpose of the reporting requirements.⁴ For the purposes of this opinion, this Board also does not make such a distinction. The County's contract on behalf of the Council is with the lobbyists' firm and specifically names the individual lobbyist as the principal consultant.

Interactions between elected officials and lobbyists are generally an area of heightened scrutiny by the public as well as the media. The levels of connection between the lobbyists and the requestor in both their official and individual capacity, could conceivably raise questions as to their level of fairness and/or impartiality of judgment if the situation were to arise in which those same lobbyists were to come before requestor as a member of the Council, regarding matters affecting the lobbyists' other clients interest. While we do not assert that the requestor's fairness or judgment is or would be compromised, the overlapping nature of these connections, could lend to the appearance of such. An inference could be made that the lobbyists are acting as an

³ Other members of the Council have reported receiving campaign contributions from the lobbyists or the lobbyist's company, however those members are not the subject of this opinion and therefore will not be discussed in the context of this opinion.

⁴ See Md. Code Ann. GP. § 5-708

intermediary between their other client's interests and members of the Council, which would be prohibited by the Code of Ethics.

Another area of concern is the appearance of a possible quid pro quo scenario, in which the hired consultants for the Council also donate to the Council members. From a public trust perspective a consultant's contributions could give the appearance that their respective firm received an unfair advantage in the awarding process of the contract as a result of those contributions. It could be reasonably inferred that the campaign contributions of the consultants are also an effort to influence future contract opportunities with the Council.

Stan Brown is not a lobbyist, however he does contract with the County as the People's Zoning Counsel. Mr. Brown has continuously received the contract for nearly two decades. The campaign contributions received from Mr. Brown's firm also raises areas of concern. As the People's Zoning Counsel, Mr. Brown's fiduciary duty is to the citizens of Prince George's County. The role of the People's Zoning Counsel and the best interest of the citizens may at times differ from the Council's legislative actions. His appearance before the Council in matters related to his role and the simultaneous campaign contributions could give rise to the appearance of a conflict of interest as to where his loyalty lies. As well as, the appearance that his continued appointment to the position of People's Zoning Counsel is on some level related to his campaign contributions to elected officials.


CONCLUSION

The Code of Ethics is to be liberally construed to accomplish the purpose and policy set forth by the law. One of the most 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 contract with each consultant 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, the act of consultants making contributions to elected officials who vote on procurement and legislative business does give rise to the appearance of a conflict of interest. Many times when there is an allegation of improper conduct by an elected official, the exchange of money is an essential part of the allegations. In those instances, improper conduct typically involves someone acting as a middle man of sorts to steer money to elected officials in exchange for their vote on a particular matter. In this case, the Council has contracts with lobbyists to act on its behalf. Those same lobbyists then make campaign contributions to Council members. Simultaneously, at times, those lobbyists are being paid by other clients to lobby for their interest in the County. This sort of intertwined relationship makes it very difficult to distinguish which duty and to which client the lobbyist is upholding at any given time. Minimally, the dual role of representing the County and lobbying the County at the same time gives rise to the appearance of a conflict of interest.

To avoid such conflicts, it is recommended that at a minimum the requestor on an individual level refrain from receiving contributions from anyone who has a contract with the Council or is seeking to obtain such a contract. To assist in avoiding such conflicts, they may wish to impose some sort of disclosure requirements on potential donors. The Council in its role as District Council currently follows disclosure requirements for all zoning matters. In those matters zoning applicants must file affidavits relating to any payment or contribution made to elected officials in the 36 month period prior to the filing of the applications. Applicants are prohibited from making contributions during the pendency of their applications. The adoption of similar disclosures and prohibitions should be considered. As an elected official the requestor may also wish to consider introducing such legislation on this topic for the Council.

The Board finds that the specific request for guidelines regarding the acceptance of campaign contributions by Council Members falls outside of the jurisdiction of the Board. As such, contact with the State Board of Elections to seek further guidance is advised.


Covette Rooney
Board Chair