



THE PRINCE GEORGE'S COUNTY GOVERNMENT BOARD OF ETHICS

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Executive Director

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BOARD FINANCIAL DISCLOSURE STATEMENT WAIVER DECISION

August 28, 2014

[REDACTED]
Prince George's County
Art and Humanities Council
[REDACTED]

Re: Case Number: 15-2013(1)

Dear [REDACTED],

The Board of Ethics (the "Board") has reviewed your request, dated June 30, 2014, seeking a waiver from the filing of financial disclosure statements as required under the Prince George's County Code (the "Code"). In analyzing your request for waiver, an examination was made of Executive Order No. 13-2014, as well as the Code, in particular, Sections 2-291, 2-294 and 2-314 *et seq.* For the following reasons, we find that your organization should file financial disclosure statements:

APPLICABLE LAW

A. Section 2-294

Section 2-294(a)(34) of the Code requires certain officials, employees, and/or appointees of the County government whom the County Executive designates by Executive Order to file financial disclosure statements as provided in the Section. Officials subject to this disclosure requirement must be directly responsible for making governmental decisions, policy or taking governmental action pursuant to any such decision or policy or recommending any such decision, policy or action with regard to:

- (A) Procurement or contracting;
- (B) Administering or monitoring grants or subsidies;

- (C) Planning and zoning;
- (D) Inspecting, licensing, regulating, or auditing any nongovernmental enterprise; and
- (E) Other activities where the decision, action or policy might have significant economic impact on the interests of any nongovernmental enterprise.

In addition, pursuant to an Executive Order issued in accordance with Section 2-294(a)(35), the County Executive can require any other officials, employees, and/or appointees of the County government to file financial disclosure statements, if such officials, employees, and/or appointees are dependent partly or wholly in their private interest by association with the County government, and in the course of their private duties and/or services utilize public equipment, supplies, property, or the influence of their public office.

B. Executive Order No. 13-2014

A review of Executive Order No. 13-2014, as promulgated pursuant to Section 2-294 of the Code, lists your organization as one of 48 boards, commissions or similar entities designated by the County Executive as being required to file financial disclosure statements. Executive Order No. 13-2014 was issued to further the public trust and to set minimum standards for the conduct of local business by members of boards, commissions, and similar entities. Through the disclosure of relevant financial information, the impartiality and independent judgment of board, commission, or similar entity members can be assured. Executive Order No. 13-2014 serves to bring into compliance those boards, commissions, and similar entities not expressly captured in Section 2-294 of the Code. Although not specified in Section 2-294, the functions of the boards, commissions, and similar entities listed in Executive Order 13-2014 implicate the requirements of the Section. Thus, the contention that your organization is not enumerated among the county agencies required to file financial disclosure statements under the Code is simply not true. Your organization is listed in an executive order, which was issued pursuant to law and became effective on April 23, 2014.

C. Section 2-291 – “Official”

In 2012, the County Council expanded the term “**official**” to mean “an elected official, an employee of the County, or a person appointed to or employed by the County or any County agency, board, commission, or similar entity whether or not paid in whole or in part with County funds and whether or not compensated.”¹ The reasons given for this amendment include the need to comply with State law and the “recogni[tion] that our system of representative government is dependent in part upon the people maintaining the highest trust in their public officials and employees...” The County Council went on to declare “that the people have a right to be assured that the impartiality and independent judgment of public officials and employees will be maintained...[that] 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

¹ See Prince George's County Code Section 2-191 and CB-36-2012.

improper influence...[and so] [f]or the purpose of guarding against improper influence, the County Council enacts this Code of Ethics to require County elected officials, officials, [and] employees, and individuals appointed to boards and commissions to disclose their financial affairs and to set minimum standards for their conduct of local business...[and that] it is the intention of the Council that this Division, except its provisions for criminal sanctions, be liberally construed to accomplish this purpose.”² It is important to note that not only was the Code revised to include and define the word “official” but it was also amended to add and subject boards and commissions to financial disclosure.³

ANALYSIS

Members of your organization should be required to file financial disclosure statements because they are considered “officials” of the County. It does not matter that members of your organization are volunteers and receive no compensation for their service. Members of your organization administer or monitor grants or subsidies; and conduct activities where the decision, action, or policy may have significant economic impact on the interests of a nongovernmental enterprise. Your organization is a 501(c)(3) corporation but it was created in 2010 by the introduction and passage of a bill in the Prince George’s County Council on July 13, 2010 and September 27, 2010, respectively.⁴ Section 2-314 of the Code explains the purpose and legislative intent for your organization, which is comprised of at least nine (9) but no more than twenty-five (25) members who are residents of the County, appointed by the by-laws of your organization as directed in Section 2-315 of the Code. The governing body (County Executive and County Council) may each designate one representative to serve as an ex-officio member of your organization. Your organization serves the public at large as the arts funding organization for the County. Your organization is a recipient of federal, State, private, and County funds. As indicated in your letter, your organization also “distributes funds annually to artists and art organizations in the County as part of [its] grants program.” In addition, your organization is statutorily required to provide advice and guidance to the County Executive, the County Council, and the business and civic community at large. In fact, your organization works in tandem as a primary member of a program run by a County agency. The program, Arts in Public Places, run by the Office of Central services, provides opportunities for artists to display their work on a large scale in a public setting and for the visual enhancement of public settings. Appropriations are also set aside by the County for artwork in newly constructed County buildings. There are a total of seven (7) members including one (1) County Council representative, 1 Arts Council representative, 1 County Executive representative, 1 guideline and program expert, 1 Maryland-National Capital Park and Planning Commission representative, and two (2) citizen representatives.⁵ Furthermore, by law, your organization is required to meet in public session, and must advise and report to the County Executive and County Council every year.⁶

² *Id.*

³ Underscoring indicates language added to existing law. In this opinion, [brackets] indicate *emphasis* added by the above-signed.

⁴ See CB-58-2010.

⁵ See Prince George’s County Code §§ 2-460 *et seq.*

⁶ See Prince George’s County Code §§ 2-314 *et seq.*

CONCLUSION

Based on the foregoing, your organization is a County board, commission, or similar entity and its members who serve on the board of directors, are County officials subject to the filing requirements of Section 2-294 of the Code. As a body enacted pursuant to statute, your organization, along with other similar boards and commissions, compose a formal system through which citizens can advise the County Executive and County Council on major issues affecting the County. Even more, your organization receives and distributes, through competitive grants programs, County funds to provide financial support to artists, arts organizations, and other civic entities. It is also seeking to relocate its offices to County owned property in Hyattsville, Maryland. The filing of financial disclosure statements serve to remind public officials and employees of their financial interests to help them avoid conflicts of interest, while at the same time promoting public confidence in the integrity of government by providing citizens with information about those who serve them. Section 2-294(h) of the Code permits the Board to grant exemptions or modifications to the financial disclosure requirement where it finds that application of Section 2-294 would (i) constitute an unreasonable invasion of privacy; (ii) would significantly reduce the availability of qualified persons for public service; and (iii) would not be contrary to the purpose of the Section. Nothing advanced in your letter, supports your contention that submission of financial disclosure statements to the Board “would present a serious challenge and be overly burdensome for the recruitment of members...”

In reaching this decision, the Board has relied upon the facts as presented by your organization.

Sincerely,

Covette Rooney
Board Chair

Enclosure: Executive Order No. 13-2014