

Ethics Update

A newsletter from the Anne Arundel County Ethics Commission

June 2009, Issue 48

The world is divided into people who do things and people who get the credit. Try, if you can, to belong to the first class. There's far less competition.

- Dwight Whitney Morrow, businessman, diplomat (1873-1931)

LEGISLATIVE IMMUNITY: THE DIXON CASE (and what it means to us)

You may have read that the Baltimore circuit court recently dismissed part of the indictment filed against Mayor Sheila Dixon stemming from her alleged acceptance of gifts and/or theft of gift cards donated to the city for the use of its citizens.

In dismissing some of the charges- those relating to perjury- the court relied upon the doctrine of legislative immunity. This doctrine, developed centuries ago in England, provides that legislators should be free from judicial scrutiny for actions taken in their official capacity. In England, and in the United States and Maryland Constitutions, this doctrine applies to legislators through the "speech and debate clause." It ensures that legislators may debate the issues and vote their consciences freely, without interference by the judicial or the executive branches of government.

For members of the United States Congress and for all state legislators, this immunity is

deemed to be absolute. And, it cannot be waived by anybody except possibly the legislator who is being challenged.

However- and this is an important distinction – the immunity granted to *local* legislators is based upon the common law, not upon a constitution. It is the same immunity and it is absolute, except that this common law immunity, like most common law, can be superseded or waived by a state statute.

The State of Maryland has enacted such a statute. In the Maryland Code, the "Express Powers Act," Article 25A enumerates the powers of charter counties in governing themselves.¹

Section 5A(Q) of the Express Powers Act provides that the county council may:

"enact local laws designed to prevent conflicts between the private interests and public duties of any county officers, including members of the county council, and to govern the conduct and actions of all such county officers in the performance of their public duties, and to provide for penalties, including removal from office, for violation of any such

¹ You may access this statute online at: <http://michie.lexisnexis.com/maryland/lpext.dll?f=FifLink&t=document-frame.htm&l=jump&iid=3a4c15b3.394661c7.0.0&nid=4097>

laws or the regulations adopted thereunder."

The state expressly permitted the county council to leave its legislative immunity at the door. The council in turn, enacted the Public Ethics Law, subjecting council members and their legislative activities to its scrutiny.

As cynical as some of us may be from time to time about our government, this is one action for which we should be wholeheartedly grateful.

Men of integrity, by their existence, rekindle the belief that as a people we can live above the level of moral squalor. We need that belief; a cynical community is a corrupt community.

- John W. Gardner, founder of Common Cause (1912-2002)

It is also important to note that while members of the county council have at times strongly and vocally disagreed with the ethics commission on a number of issues, nobody on the county council has ever challenged a ruling of the ethics commission based on legislative immunity.

Getting back to the Dixon case- the City of Baltimore is not a county and is not subject to the Express Powers Act, so legislative immunity may apply – as a probable appeal will determine. At any rate, the court's decision was not based on any misapplication of

the ethics law. So what happens next? Stay tuned. . .

SUMMARY OF RECENT OPINIONS

Since the last issue of the *Ethics Update*, the commission has issued 11 advisory opinions. A summary of each of those opinions is available on the commission's website at:

<http://www.aacounty.org/Ethics/Opinions2009/index.cfm>

You may also read the full opinion by clicking on the link that is found in the index. The topics featured in this year's opinions include: charitable gift solicitations/sponsorships, service on boards of non-profits, recusal requirements, and prestige of office.

ERROR- The summary of opinions article in the March 2009 issue of the newsletter mistakenly refers to AO-00-03. It should be AO-09-03. The director regrets the error- it is her first ever (not).

ANSWER TO THE LAST TEST

You were asked to name the person who had not been mentioned in the media in connection with an ethics issue.

The answer is that all of the people listed were involved in ethics "scandals," even if nothing ever came of them (a not infrequent occurrence.)

The most frequently guessed wrong answer was Nancy Pelosi.

Unfortunately, nobody got the right answer. If you would like more information about the ethical

issue faced by any of those named, please let us know.

The closest to perfection a person ever comes is when he fills out a job application form.

*– Stanley J. Randall,
businessperson (1908-1989)*

WEBSITE UPDATE

- Training dates through 2009 are available on our event calendar. There is no training scheduled through the summer- it's beach time. Get out there and stimulate the economy.
- Notices of commission meetings are posted on the event calendar- they are no longer sent to the newspaper or posted on the bulletin board in the Arundel Center.
- The list of currently registered lobbyists is updated on the first day of every month. If your favorite lobbyist isn't on the list, let us know- mistakes happen.

BUDGET NEWS

Like every other county department, agency, and commission, the ethics commission took a significant hit to its FY 2010 budget.

In an ongoing effort to do more for less, the commission has stopped creating and sending paper forms by mail to county employees who are required to file financial disclosure. We have asked all volunteers and lobbyists to forego receiving mailings and paper forms and are trying to do most disclosures with electronic mail.

Almost half of all county volunteers and lobbyists who are required to file disclosure agreed to communicate exclusively through e-mail. Of course, all forms must be printed out and submitted in writing by the filer. (The cost of providing an online filing system is way beyond our reach.) So the costs of paper and mailing are more accurately, simply being "re-routed," in nominal amounts, to the people who are required to file.

Everybody wants to eat at the government's table, but nobody wants to do the dishes.

*- Werner Finck, German
comedian, (1902-1978)*

AND NOW, A TEST. . .

Be one of the first three people to answer the test correctly and win a real GEM! (Genuine ethics mug)

Which of the following employees are **not** covered by the county's ethics law?

1. Ethics commission staff
2. Health department employees
3. Sheriff's office employees
4. Social Services department employees
5. State's attorneys' office employees
6. All of the above are covered
7. None of the above are covered

Scandal is what one-half the world takes pleasure in inventing, and the other half in believing.

*- Horace Smith, British
poet, novelist (1779-1849)*