

Op. 96-109

Issues: 1. Whether an official of the County, who serves as a member on the Board of a nonprofit, charitable organization, may use his name and official title on a letter soliciting funds for the organization, without violating the prohibitions against soliciting gifts under §3-104, or using the prestige, title, or authority of his office for the gain of another, under S. 3-104?

2. Whether an official of the County may serve as an active member of the Board of a nonprofit, charitable organization, without violating the provisions of S. 3-105 prohibiting certain types of outside employment.

Background:

An official of Anne Arundel County serves as a member of the local board of a nationwide charitable organization that has opened a local chapter in Anne Arundel County. The organization's stated mission is to provide education and other opportunities to youth, especially youth considered "at risk." The nationwide organization is well-known, established, and respected. Its local chapter has developed a brochure with photographs, a description of its activities, its mission, and the addresses of its three locations in the County. It has also developed a letter, to be sent over the name and title of the official, which reiterates its general mission and solicits a financial contribution. In his capacity as an active member of the Board, the official participates in monthly meetings, serves on the budget steering committee, and participates in a general exchange of ideas and plans. The county has also donated office space, utilities and maintenance services to the organization. The official's agency permits the organization to use its two buses. These buses are used for agency programs and are made available to groups on an "as available" basis.

The first pertinent provision of the local ethics law provides that "an employee may not solicit any gift." (S. 3-106). This restriction is not without its limits. The Commission has previously concluded that purely personal activities not involving County employment or interests are allowed by this provision. (AACEC Op. 96-103). If the official does not use his County title in his capacity as a Board member but serves in a personal capacity only, his participation in fundraising would not violate the bar against employee solicitation of gifts. His name may appear on fund-raising literature along with all other members of the board, but not with his official county title, or any other reference to his position in County government. Additionally, the fundraising effort should avoid targeting particular groups, e.g., the official's subordinates, people or entities doing business with or subject to regulation by his department, or anybody affected by the performance of his duties.

The federal government has similar provisions in its ethics regulations and the Office of Government Ethics has reached a similar conclusion. *See*, OGE Memo 93 x 19 ("An employee may engage in fund-raising activities in a personal capacity if the employee does not use his official title, position, or authority to further that effort or personally solicit funds or other support from subordinates or from anyone known to him to be a prohibited source. . . "). *See, also*, OGE Informal Advisory Letter 95x8. The State Ethics Commission has reached the same conclusion, saying that ". . . persons holding high level and visible state positions should

generally avoid private fundraising activities that involve solicitation to individuals or entities subject to their contractual or regulatory authority." COMAR, Tit. 19A, Opinion 90-7. A general mailing or mass solicitation using the official's name only, would be within the limits of these guidelines.

The next provision, S. 3-104, states that "An employee may not use the prestige, title, or authority of the employee's office or position for the employee's private gain or the gain of another." This section would have the same effect as the prohibition on solicitation of gifts by requiring the official to refrain from using his title in any fundraising activity he undertakes for the Board, since fundraising would constitute a "gain", or a financial benefit to another.

However, the restrictions contained in this provision are not limited to fundraising activities. The provision is meant to ensure that an employee shall take no action that may even appear to have the force of county authority or approval behind it. Whenever a county official endorses an organization, or its goals, citizens will wonder whether the endorsement is a personal or official one. People or entities subject to the authority of the official or the official's agency will consider the impact of that endorsement on their activities. Should they also endorse the organization? Should they make a donation? Will their decisions have a positive or negative effect on their relationship with the official or his agency? Even if the official is not actively soliciting funds, will he know who made a donation? Will he have any influence in how the donation is spent? Should they refrain from criticizing the organization?

The questions raised by an official's activities for a private charitable organization are significant ones. The official's integrity and good intentions become subject to scrutiny and can be questioned by his critics or by other entities seeking his endorsement. And, if he fails to endorse other organizations with equally valuable goals, he may be accused of favoritism.

Additionally, membership in an active capacity on the board of any private, albeit charitable organization, raises issues of restricted outside employment under S.3-105. The pertinent provisions of this section prohibit an employee from:

1. being employed by or having an interest in an entity either subject to the authority of the employee or his agency, or is negotiating or has contracted with that agency;
2. having any employment relationship that would impair his impartiality or independent judgment; or
3. being employed by or representing that person concerning a matter in which the county has an interest, except in the course of the employee's official duties.

The connections between the charitable organization and the County here, are that the County indirectly supports the organization, (although not necessarily the local chapter) through its United Way campaign. Property used for office space is donated to the organization by the County, although not by the official's agency. The official's agency permits the organization to use its buses for organizational activities, but the buses are available to other organizations as well on an "as available basis."

Participation by County employees in charitable causes generally is a worthy goal. The interests of the County in this organization are remote and not at all adverse. The Commission believes that a balance can be found between a liberal construction of the local ethics law, which

is part of its legislative policy [S. 1-102(c)] and the interests of the County in promoting the welfare of its needier citizens. The State Ethics Commission has previously decided that in certain cases, "informal volunteer involvement" is permissible if the official will ". . . avoid any duties involving management or control of the [organization] or where he would be viewed as a responsible party as to its financial relationships." Op. 90-7. The AAC EC agrees with this reasoning. The Commission further believes that the prohibition against using the prestige, title or authority of the office for another's gain, is limited in scope to include financial or material gain. It would not violate the prohibition of this section for a public official to use his name and title to generate goodwill toward the organization. The Commission acknowledges that promoting volunteerism among county officials, is a goal of the highest priority and not contrary to either the letter or spirit of the ethics law.

Conclusion

The Commission concludes that the County official may participate on the Board of Trustees of the charitable organization subject to certain limitations. He may use his name and title on the letterhead of organizational literature in general, but he may not use his title or any reference to his position in the County government on any letter or other type of literature which solicits funds. He may not participate in any fundraising solicitation, officially, or personally, that targets any individuals or groups that are subject to his authority or the authority of his agency or that have any contractual or potential contractual relationship with the county. He should avoid knowledge of the sources of financial or in-kind contributions to the organization and should avoid participating in any activity where he would be or may appear to be responsible for the financial decisions of the organizations. Finally, he should also avoid otherwise permissible activity which may impair his impartiality or independence of judgment. He should not for instance, participate in any decisions about the organization's use of his agency's buses or its use of any County property. These limitations should provide the appropriate balance between involvement in worthy charitable causes and the equally important goal of insuring and impartial and independent conduct of the county's business.

Date:

By: The Anne Arundel County Ethics Commission