

Anne Arundel County Ethics Commission

Advisory Opinion -97-114

Issue:

Whether the Department of Aging may sponsor the program of a private entity that proposes to make home visits to clients of the Meals-on-Wheels program to provide screening and information about its services.

Background:

A private entity that provides physical and occupational therapy has contacted the Meals-on-Wheels providers and the Anne Arundel County Department of Aging, seeking their joint sponsorship of a program proposed by the entity. In this program, the private entity would travel with Meals-on-Wheels volunteers to visit clients in their homes and provide screening services to determine if the individual is in need of, or would benefit from, the private entity's services. These services are sometimes covered by Medicare. The entity would provide flyers outlining its services to potential customers, and would seek permission to enter the home and provide the free screening. It would not enter the home without the permission of the client.

The Department of Aging currently allows various private entities to make presentations to senior citizens at the senior centers it manages throughout the county. The presentations may include information about the services the entities provide, and may also include some type of free screening. At the centers, there is always an employee of the department present, to ensure that no undue influence or pressure is exerted over its clients and to make sure that the presentations run smoothly. In the program proposed in the instant case, there will be no employee of the Department of Aging present at the clients' homes during the visits by the private entity.

Discussion:

The Department of Aging provides information and services to citizens who often do not otherwise have access to services, or who are unfamiliar with the types of services available to them. Some of these same clients are also vulnerable to sales pitches or high-pressure tactics. The Department of Aging finds that frequently it must walk a fine line between providing information about these services on the one hand and protecting its clients from intrusive and unwelcome solicitations on the other.

In the present case, the private entity would offer free screening in the homes of the clients of the Department of Aging and Meals-on-Wheels. Its probable purpose in doing so, is to acquire customers for its business. This program is essentially a marketing or advertising initiative and the screening provided in the home is the advertising tool. While it may be

advertising a useful service, it is still advertising for a private financial gain.

The ethics law, §3-104(a), provides that "[a]n 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." The ethics commission has generally concluded that this section refers primarily to financial gain. Under this provision, sponsorship by the Department of Aging of this private entity's program may constitute the unlawful use of the prestige of the Department of Aging for the financial gain of a private entity.

A "sponsor," according to Webster, is one who "assumes responsibility" for a person or who "vouches for the suitability of a candidate." Webster's New Riverside University Dictionary, 2d ed. (1988). By another definition, a sponsor is "a surety," or one who "gives security" for another. Black's Law Dictionary, 6th ed.(1990). The Department of Aging, in sponsoring essentially private advertising, would by definition, be vouching for the quality and veracity of the private entity. Sponsorship by the department could only serve to enhance the advertising effort of the private entity and would therefore constitute an impermissible use of the prestige of the Department of Aging for the financial gain of a private entity.

In addition to avoiding the sponsorship of this enterprise, the Department of Aging should take affirmative steps to avoid creating the appearance of sponsorship or support for the private entity's business. It should ensure that there is no reference to the Department of Aging, or any of its officials or employees in any literature or "flyers" distributed by the entity. There should be no reference to any of the department's programs in its literature. The department should in fact, require the entity to include a disclaimer of sponsorship or of any type of support by the county or any county agency or program in advertising or informational literature targeted at clients of the department. Alternatively, the department should distribute its own disclaimer of sponsorship or promotion of this private activity. In this way, the department could ensure that there is not even an appearance of sponsorship.

Finally, the ethics law, §3-107, states that ". . . other than in the discharge of the official duties of the employee, an employee may not disclose or use for . . . the economic benefit of another party, confidential information that the employee has acquired by reason of the employee's public position and that is not available to the public". This provision means that the Department of Aging should not provide names or addresses of its clients or clients of Meals-on-Wheels, to any entity or vendor, unless it maintains such lists of names as public records, equally accessible to everybody. In that case, the private entity should not be given easier access to that information than anybody else.

Conclusion

The ethics commission concludes that the Department of Aging may not sponsor the program proposed by a private entity to go into the homes of clients of Meals-on-Wheels, without violating the ethics laws, §3-104, and possibly, §3-107. The ethics law does not prohibit the Department of Aging from making information available to its clients, even if that

information comes from private business entities. The law requires only that the department take affirmative steps to disassociate itself from any sponsorship or positive support of the enterprises that are seeking business from the department's clients. The department should also make sure that no confidential information is provided to private interests, and that public information is provided to private interests on the same terms and conditions as it is provided to anybody else.

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The Anne Arundel County Ethics Commission

Norman G. Myers, Sr., Acting Chairman