

Anne Arundel County Ethics Commission

Advisory Opinion

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Issues:

1. Whether the use of uniformed police officers in photographs in campaign brochures for a candidate for county executive violates the Public Ethics Law, §3-104.
2. Whether the presence of a cake with a political slogan at a picnic for police department employees violates the Public Ethics Law, §3-104.

Background:

During the summer of 1998, three picnics were held for the employees of the police department. The picnics were intended to permit employees from all three shifts to attend one picnic, at the most convenient time. The food was provided by the F.O.P., the Sergeants' Association, and a few private donations, although some people brought desserts. One of the desserts at one of the picnics, was a sheet cake that read, "A vote for 'X' is a vote for Chief 'Y' (or "the Chief", depending on the version). The baker of the cake, a police officer, came up with the idea for the writing on the cake. Apparently, some of the people present believed this cake was intended to be a joke, and some people believed it constituted a political endorsement. Consequently, some people laughed and some people were offended.

The county executive attended at least one of the picnics, and the chief of police attended all of them.

In the fall of 1998, the county executive requested that some uniformed police officers be sent to appear for a photo shoot with the county executive. This request was transmitted to the office of the police chief. Supervisors in the chief's office called certain officers and requested that they appear in uniform for the photo shoot. The officers did appear as requested, and did so during their work shifts, or as part of an overtime shift. These photos subsequently appeared in a series of campaign brochures urging people to vote for the county executive. One of the photos featured the county executive talking to a person at what appears to be the doorway of the person's home. The county executive is accompanied by two uniformed police officers. The same two officers appeared in another photo with the county executive, in which they are walking together. One of the officers appears to be smiling and talking and the county executive appears to be listening. In a third photo, the county executive is standing among a group of uniformed officers, apparently from different public safety services. In the background are a police car, a helicopter, and a fire engine.

Discussion:

The Public Ethics Law, §3-104, prohibits the use of the "prestige, title, or authority of the employee's office or position for the employee's private gain or the gain of another". As the head of the county government, the county executive is the ultimate supervisor. The Anne Arundel County Charter, §405, specifically authorizes the county executive to "supervise, direct, and control" the executive branch of the county. The executive branch includes the chief of police. The chief of police supervises the employees of the police department. Issuing orders is within the supervisory authority of the county executive and the chief of police. An "order" from the county executive to appear in campaign advertising would constitute the use of the authority of the county executive's position. Campaign literature is designed to promote a candidate, and therefore is designed for the candidate's own gain. The obvious conclusion is that if the county executive "orders" an employee to appear in campaign literature, the county executive is using the authority of the position for the county executive's private gain.

A "request" from the county executive may not be an "order", but it can be equally coercive. The coercive effect of a request from the official head of the county government is exacerbated when that request is forwarded to the employee by that employee's supervisor in the office of the chief of police. Employees frequently interpret a "request" as an "order", or at least, as a "very good idea", especially if it comes from the boss and the boss of the boss. It would be simply incredible for the county executive or the chief of police to claim that a request from either of them to a police department employee comes without significant pressure to comply.

This conclusion does not relieve the individual employees who appeared in the advertisements from their responsibility in this instance, although it tends to explain their reasons for participating. Every employee, regardless of rank, is subject to the provisions of the ethics law. The use of a police uniform is part of the authority of the police officer's position. Wearing a uniform for a campaign advertisement is the use of that authority for the gain of the candidate and quite possibly for the officer's own gain, in the resulting gratitude of the candidate and the chief of police.

The photographs can be reasonably construed as endorsements. For what else could they be intended? Any voter could reasonably conclude that many police officers support the candidate, or even that the police department supports the candidate. Insofar as some voters may admire and support the police department, they could be persuaded that a vote for the candidate would be a vote for a strong police force.

The second issue raised by this request for an opinion is whether the officer who baked the cake with the political slogan violated the Public Ethics Law. It goes without saying that the chief of police and the county executive may hold picnics for their employees without violating the ethics law. They may even hold these picnics during the height of the campaign season. The county executive's responsibilities do not cease during the campaign and the appearance of the official head of the county at official department functions is well within those responsibilities.

For the candidate or other members of the county government to "order" or "request" that

campaign literature be disseminated at an employee picnic would violate the Public Ethics Law, §3-104. It is irrelevant whether the campaign message appears in a brochure or on a cake. However, in this case, the cake was designed and baked by a police officer without any request from anybody. Gratuitous cake baking is not part of the authority of the position of police officer and is therefore not an ethics issue. As a joke, it might fall flat or rise to an offensive level, but it does not constitute an ethics violation. Whether it violates any state law on engaging in political activity while on the job, or whether it violates any police department rules, is not a matter within the jurisdiction of the ethics commission.

Conclusion:

It is a violation of the Public Ethics Law, §3-104 for a supervisor to request or order an employee to appear in campaign literature. It is particularly inappropriate for that order or request to include the use of the uniform and the use of county time. It violates the same section of the ethics law for an employee to knowingly appear in campaign advertising while in uniform and during the work day.

Date: December 7, 1998

By: the Anne Arundel County Ethics Commission