

## **Anne Arundel County Ethics Commission**

### **Advisory Opinion AO-98-92**

#### **Issues:**

1. Whether, and under what circumstances the county may distribute information and promote various services and discounts offered by local businesses to county employees without violating the Public Ethics Law, §3-104(a) (misuse of the prestige of office).
2. Whether guidelines can be developed to permit the county to promote various charitable fund raising efforts without violating §3-104(a) or §3-106(a)(prohibiting the solicitation of gifts).

#### **Background:**

The personnel office periodically receives unsolicited information about discounts available to county employees for various goods and services from area businesses. Examples include offers of discounted tickets to professional sports games or amusement parks, memberships in health or shopping clubs, and discounted prices at restaurants and other businesses. Occasionally, the county has circulated this information throughout the county, notifying its employees of these opportunities. In one instance, the personnel office circulated via the e-mail, notice of the availability of discounted memberships and a free initial first visit to a newly opened health club in the county. Flyers promoting the club's various services were made available upon request to employees through each county department's personnel liaisons. In addition to the commercial entities that solicit the county, there are charitable fund raising entities that seek the county's official and active support in collecting donations from county employees.

#### **Discussion:**

Section 3-104 of the Public Ethics Law, prohibiting the use of the prestige, title, or authority of an employee's office or position for the gain of another, is liberally construed by the ethics commission, in accordance with §1-102(c). In previous advisory opinions, the commission has stated that a county official may not use a county job title or other accouterments of the office to raise funds for non-profit organizations, even if that official sits on the organizations's board of directors. The commission believes that lending the name of the county (or of a representative of the county) to an outside entity constitutes an endorsement of that organization. An endorsement by the county of any organization, whether charitable or commercial, constitutes the use of the prestige, title, or authority of the participating official for the gain of another. With some limited exceptions<sup>1</sup>, the endorsement or promotion of a private

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<sup>1</sup> The ethics commission has permitted the county to endorse fund raising for charities under certain circumstances. The issues raised by the county's support of charitable entities

entity violates §3-104(a) of the ethics law..

The ethics law was enacted to ensure that government officials and employees act with "impartiality and independent judgment". Even the *appearance* of improper influence erodes the trust and confidence of the people in the operation of government. See, §1-102(a) and (b). The fact that an employee exercises discretion in choosing the entities that the county will support and the level of that support constitutes the use of the employee's authority, as defined in §3-104(a). Whenever the county government, upon request of a private organization, solicits charitable contributions, encourages county employees to take advantage of a commercial offer, or otherwise provides assistance with a private organization's advertising or promotions, it is appearing to endorse that organization. The only way to offset this impression is to provide the same services to any organization that offers or is willing to offer similar packages. For instance, if the county promotes "Employee Night" for the Orioles, how can it not promote Ravens football or Johns Hopkins University Lacrosse or high school soccer championships, or recreational league field hockey? If a sports organization cannot offer discounts, is it not entitled to the county's endorsement?

If the county government will distribute to its employees brochures offering discounted services to a health club, should not every health club be entitled to the same service? And if the county offers this information about health clubs, should these same county resources be available for example, to cable television services, discount coupon books, carpet and upholstery cleaners, restaurants, long distance telephone services, automobile clubs, magazines, credit card companies, and vacation resorts? Which county representative decides what offers are worth promoting - a baseball fan? an exercise enthusiast?

The request for these guidelines indicated that "the County government, as one of many employers, acts in a variety of roles for the betterment of employee morale and work life". Contrary to this assertion, the county is not like one of many employers. The county is a governmental body, acting on behalf of county citizens. Its actions are specifically and legislatively regulated to ensure ethical conduct by its representatives. While a private employer can base its decisions on the personal preferences of its owners, officers, or directors, the county government must, by law, act with impartiality.

The ethics law, §3-104(b), states that "[t]he performance of usual and customary constituent services by an elected official or the staff of an elected official, without additional compensation, does not constitute the use of the prestige, title, or authority of office or position for private gain or the gain of another". The ethics commission believes that constituent services are services performed without favoritism for any constituent in the same or similar circumstances as any other constituent seeking those services. The issue is whether the county's distribution of information about, or support for services by commercial entities can be

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differ to some extent from the issues of the county's support for commercial entities, and so they are discussed separately in this opinion.

considered "constituent services". Disparate treatment of similar commercial entities will not look like "constituent services" but will appear to be the result of some type of favoritism, or "improper influence".

The issues raised by §3-104, prohibiting the use of the prestige or authority of office for the gain of another, applies equally to charitable organizations. How can the county guarantee impartiality in deciding which charities to actively support with employee solicitations? Must every charity receive equal treatment?

Another provision of the ethics law is also relevant to the county's support of charitable fund raising entities. Section 3-106(a) states that "[a]n employee may not solicit any gift". Taken at face value, both sections 3-104(a) and 3-106(a) would absolutely bar the county's solicitation of contributions from its employees (or others) for the United Way, the Environmental Fund, or other charitable organizations. The ethics commission has previously concluded that this literal interpretation would interfere with the legitimate business of the county, stated in the preamble to the Anne Arundel County Charter, to promote the general welfare. In previous opinions, the ethics commission has concluded that the county may solicit donations for charitable organizations if: the program is a county-wide program sanctioned by the county administration; the ultimate beneficiary of the donations is the general public, as opposed to any county employee; and the purpose of the solicitation is to promote a legitimate government purpose. It is up to the county administration to determine which charitable organizations tend to further a legitimate government purpose. As long as these decisions are based on objective criteria, they will not be subject to accusations or appearances of partiality in the choices that are made. If for example, the county chooses to actively support only broad-based umbrella organizations, or charities that are managed by or serve primarily local interests, those choices will appear to be based on legitimate county governmental objectives.

There is no governmental purpose to be served by the county's support of the promotional activities of commercial entities. However, subject to certain limitations, the county office of personnel may distribute information about commercial entities without violating §3-104(a) of the Public Ethics Law.

First, the county should provide the same type and amount of access to any local business offering similar discounted services, regardless of which services the county official considers "the best deal". If the county provides e-mail access to all employees about a discounted membership at one health club, it must provide the same service to the other health clubs. Second, if the county offers this service to health clubs, it must offer the same service to other entities offering discounted memberships or services, such as shopping clubs, or long-distance services.

The county must take affirmative steps to deny that it is endorsing any product or service, and it may not act as an intermediary between the commercial entity and any county employee or department. For example, the county could include the following statement with any distributed

information. " The county has been requested by the ABC Corp. to provide the following information to you. The county does not endorse this [offer, product, or service]. If you are interested in obtaining this [offer, product, or service] or would like further information, please contact the ABC Corp. directly."

Finally, the county can provide information to its employees, but it may not reproduce commercial flyers or otherwise expend funds for the distribution of commercial information.

**Conclusion**

The county may actively support and solicit contributions for charitable entities. The county may also distribute information about commercial promotions to its employees. However, in both situations, the county should follow certain minimum guidelines, set forth in this opinion, to ensure that its actions avoid even the appearance of partiality or favoritism to one entity over another.

By: the Anne Arundel County Ethics Commission

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Date

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William J. Howard, Chair