

June 11, 1998
Re: IO - 98- 85

You inquired whether the staff of the county executive may telephone community business people as a follow-up to a letter soliciting donations in support of a Cultural Arts Foundation event.

You advised that this summer, the Cultural Arts Foundation will be presenting the third annual "Star-Spangled Evening". This event will showcase the talents of several county musical groups as well as the Baltimore Symphony Orchestra. It will be held at the Anne Arundel Community College and tickets are free to the public although donations are invited. The costs for putting on the event are significant, and the Cultural Arts Foundation hopes to defray a large portion of those expenses by donations from the business community.

To assist this effort, the county executive asked a local business person to write a letter to over 400 business people throughout the county and surrounding areas, asking for donations to support this annual event. The letter, on Cultural Arts stationary, was signed by the county executive as well as the business person. The letter states that the county, the community college, the cultural arts groups and the Foundation are working together to provide this event, but the letter directs questions, as well as pledges and contributions to the Foundation, and not to the office of the county executive. As an added incentive, the letter advises its recipients that donors will receive acknowledgement of their contributions in different ways, depending upon the size of their donations.

To further promote the fund raising effort, the county executive would like his staff to follow-up this letter by telephoning each of the letter's recipients.

There are two sections of the Public Ethics Law that are at issue in this inquiry. The first section, §3-104, provides that county employees may not use the prestige, title, or authority of their position or office for the financial gain of another. However, this section exempts from its terms the "performance of usual and customary constituent services by an elected official or the staff of an elected official." The ethics commission concludes that county executive's visible and vocal support of cultural arts and public entertainment is an inherent part of the duties of his office and therefore constitute constituent services. Therefore, this section of the ethics law presents no obstacle to the activities described in this situation.

The second provision of the ethics law presents the greater issue. Section 3-106(a) prohibits an employee from soliciting any gift. Although this provision appears to be absolute, the ethics commission has previously found exceptions to this rule, where for example, the gift solicited will further a legitimate county agency purpose, and where the ultimate beneficiaries of the gift are the citizens of Anne Arundel County. See, AO -97-122.

In this case, the funds solicited will help fund a cultural arts event that is free and open to the general public. This event, which promotes the general welfare, is well within the purposes of county government, and will benefit the citizens of the county as well as the cultural arts groups that will be performing. For this reason, the solicitation of funds by a letter sent to a

broad range of businesses located throughout the county and surrounding areas, falls within the exception to the prohibition against soliciting gifts.

However, the ethics commission has also concluded that the solicitation of gifts by a county agency or official must be designed to prevent even the appearance of a conflict of interest. A county official soliciting a gift from a entity that does business, or seeks to do business with the county, can create the perception that making a donation is mandatory in order for the business to earn the county's good will. This perception, both to the business person and to the public, is what the ethics law seeks to avoid.

For this reason, the ethics commission advises that the county executive and his staff may neither ask for, nor accept, specific pledges to make a contribution. They may telephone the letter's recipients to remind them of the event and of the letter that has been sent out, but they must state unequivocally that it is only the Cultural Arts Foundation that is accepting contributions, and not the office of the county executive. In this way, the county executive can promote the cultural arts for the benefit of county citizens, without appearing to apply undue pressure upon potential donors to contribute to the cause.

Thank you for your inquiry. Please call me if you have any other questions.

Sincerely,

Betsy K. Dawson
Executive Director