

**Anne Arundel County Ethics Commission  
Advisory Opinion**

**99-121**

**Issue:**

Whether the department of recreation and parks may permit certain temporary or seasonal employees to enroll their children in the school-age child care program established by the department without paying the fee that is required of all other participants.

**Background:**

The county department of recreation and parks operates a child care program for school age children. During the school year, the program operates in 26 locations throughout the county. In the summer, the program is significantly scaled back, with only six sites. The maximum cost for enrolling a child in this program is \$215.00 per month, which includes both before and after school care. The department has established an installment payment plan for participants to help pay these costs.

In order to staff this program, the department hires temporary or seasonal employees. The designation of temporary, seasonal employee, provided for in the Anne Arundel County Charter, §802, permits the county to hire employees for a limited number of hours, without providing the benefits generally available to permanent county employees. In many cases, these employees work on a seasonal basis, depending on the staffing needs of the various county programs.

It has been the past practice of the department to permit these employees to enroll their children in the child care program without charge. This free benefit has been offered only to those people employed in the child care program. No other employees, whether temporary or permanent, have been permitted to enroll in this program without cost. Child care employees who do not have children, or whose children do not participate in this program, receive no comparable benefit.

New employees are required to apply for this program on a space - available basis like other participants. If the program is full, the children of these employees are put on a waiting list in the order in which they applied to participate. However, if the children of the employees have been previously enrolled in the program, they are permitted to continue, even if their participation means that other applicants are turned away for lack of space. This priority status is applied generally to all previously enrolled participants.

**Discussion:**

For this inquiry, the pertinent Public Ethics Law provision is §3-104. This section

prohibits the use of the prestige or authority of the office or position for the purpose of enriching oneself or another. The ethics commission has interpreted this provision to involve the "misuse" of the position for one's own financial gain or the financial gain of another. In this case, employees are permitted to enroll for free in the child care program precisely because of their specific employment, and for no other reason. The rationale behind this benefit is that these employees are not excessively well paid, and this free service permits them to work without undue concern for the care of their children. While the rationale is well-intentioned and compassionate, it is not particularly valid. These particular employees may not be well paid and their child care concerns may be great, but their predicament is shared by working people everywhere. It is also significant that temporary employees working in other departments or programs do not have access to the same privilege, or to one that is comparable in nature or value.

The administrators of county programs cannot pick and choose which users of which programs must pay and which users can avoid payment. The granting of privileges to some, but not all, creates the appearance of special treatment for certain county employees and runs contrary to the spirit and letter of §3-104 of the ethics law. Policies regarding payment must be developed with established and objective criteria, so that all participants can be treated equally. County employees who participate in county programs participate as county citizens, not as special employees.

This opinion does not address the propriety of establishing child care benefits for county employees in an officially sanctioned and objective way; this is a matter outside the scope of the ethics commission's jurisdiction.

**Conclusion:**

The department of recreation and parks cannot permit certain employees to participate in departmental programs without charge, where the programs are established to serve the public for the payment of a fee. This type of special privilege violates §3-104(a) of the Public Ethics Law.

Date:

By: the Anne Arundel County Ethics Commission