

Anne Arundel County Ethics Commission

Advisory Opinion

99-160

Issues:

1. Whether a special assistant to the county executive can serve as the chairperson for the Dr. Martin Luther King Awards Dinner and the Dr. Martin Luther King Memorial Breakfast.
2. Whether, as chairperson, the special assistant can solicit funds to cover the expenses of the breakfast.

Background:

For several years, two events have been held in Anne Arundel County to commemorate the life and work of Martin Luther King. For some years the coordinating committee for these events has been chaired by the same person. This year that chairperson has become a county employee in the office of the county executive. The Breakfast event is underwritten in large part by donations, contributed by public and private entities. Contributions above a certain amount are required to become of co-sponsor of the event. The Anne Arundel County government has participated as a co-sponsor for the last four years. In each year, the county has been represented by a county employee, usually the Human Relations Officer. This year, the special assistant to the county executive will serve as the county's representative, as well as the event chairperson.

Part of the event committee's responsibilities are to solicit agencies and private entities to donate funds for the event and serve as event sponsors. This year, at least one the donors to the event is a private corporation that has been involved in lobbying the executive and legislative branches of the county government.

The Dinner event is also organized by a committee, but it is fully funded by ticket sales. The committee members are required to sell (or presumably buy) ten tickets each. The recipients of the awards purchase the remainder of the tickets for use by friends, family members, and other guests of their choice.

Discussion:

The sections of the Public Ethics Law that are relevant to this discussion are §3-105 with regard to secondary employment, and §3-106, prohibiting employees from soliciting gifts. In the case of the Breakfast, the county employee is acting in an ex officio capacity, and not in a personal capacity. The employee was appointed to participate in the event by the county executive and will represent the county's interests in the conduct of the event. In fact, §3-

105(b)(2) provides that the performance of usual and customary constituent services by an elected official or the staff of an elected official without additional compensation, does not constitute secondary employment. The employee's participation in the Breakfast, representing the county in its co-sponsorship, would appear to be constituent service.

However, in neither the Dinner nor Breakfast events does there appear to be any conflict with any other provisions of §3-105. There is no other entity than the county government that the employee is representing. Since the Breakfast is an event that the county is sponsoring, the county's interests and the committee's interests are complementary, not competing. Presumably, although it is not directly involved, the county would also have an interest in the successful production of the dinner event as well. Therefore, the commission perceives no area of conflict in the employee's continued participation in either the Dr. Martin Luther King Dinner or the Breakfast, as far as the rules of secondary employment are concerned.

The more significant issue involves §3-106(a) of the Public Ethics Law, which prohibits an employee from soliciting gifts. There are exceptions to this rule. The United Way Campaign is one example, and the ethics commission has advised on several occasions that the county may solicit gifts for certain projects, under certain circumstances. See, Advisory Opinions 96-109, 97-41, 97-122, and 97-165; also Informal Opinion 98-85. Where a project or program fulfills a legitimate county purpose in promoting the health and welfare of the citizens, the ultimate recipients of the solicitation are members of the public, and the program is authorized by the county executive, the ethics commission has frequently advised that a gift solicitation can be permitted. Even in those cases, however, strict rules must be observed to ensure that no undue pressure is placed on potential donors by any county solicitation. Where, for example, a county employee solicits a gift from an entity doing business or negotiating to do business with the county, the commission believes that undue pressure or the appearance of coercion is created. Similarly, an entity that is lobbying the county would probably feel equally obliged to make a gift in response to an official county solicitation. In effect, any of the "controlled donors" listed in §3-106 (b), from whom county employees are prohibited from receiving gifts, would also be inappropriate targets for gift solicitations from county employees.

For this reason, it would be inappropriate for a county employee, whether in the employee's personal or ex officio capacity, to solicit gifts from "controlled donors". As to these donors, the employee cannot participate either personally or as part of a committee that solicits funds from specific entities, or targets controlled donors. The employee may participate in generalized fund raising that avoids targeting controlled donors, or targets large groups in which controlled donors coincidentally make up a negligible percentage. The employee should not participate in decisions as to the expenditure of any contributions (whether solicited or unsolicited), from controlled donors, and should avoid participating in any activities that involve acknowledgment of donations given by controlled donors.

Conclusion:

The ethics commission advises that a county employee may continue to serve as the

chairperson for the Dr. Martin Luther King Awards Dinner, and the Dr. Martin Luther King Memorial Breakfast, in either a personal or ex officio capacity. However, the employee cannot participate either directly, or as part of a committee, in soliciting donations from specifically targeted controlled donors, or in any of the other activities outlined in this advisory opinion. Further, any gifts received to date that would conflict with this advice, should be returned if possible.

Date:

By: the Anne Arundel County Ethics Commission