

Anne Arundel County Ethics Commission

Advisory Opinion

99-175

Issue:

Whether an employee of the Department of Recreation and Parks may sit on the board of directors of a Friends of the Park organization, participate in fund raising for the organization, and receive reimbursement for expenses, or other benefits from the organization.

Background:

Many of the county's parks receive support from private, nonprofit corporations organized specifically for that purpose. The support offered by these organizations includes fund raising activities and programs of public education. The "Friends" organizations, named after the specific park that each organization supports, are private, nonprofit organizations, governed by a board of directors. They are open to public membership.

It has been a common practice for the supervisor of each park, an employee with the Department of Recreation and Parks, to sit on the board of that park's "Friends" organization. It is the normal practice for these employees to consider themselves as ex officio, non-voting members, although the bylaws of at least one organization do not restrict the voting rights of ex officio members. These bylaws state that ex officio members of the board may serve as officers of the corporation. The park employee/board members do participate in fund raising activities for the organizations, although apparently the commitment and activity level of different park organizations varies significantly.

On one or more occasions, a "Friends" organization has paid the expenses for a park superintendent to attend a conference having to do with some aspect of park or recreation management.

Discussion:

The first issue is whether a county employee, specifically an employee of a park, may sit as a member of a board of directors of a private corporation that is organized to support the park. Voluntary, non-compensated membership on the board of directors of a private corporation can be considered to be secondary or outside employment. (See ethics commission advisory opinions: 99-197, 99-17, 99-9, 96-111.)

Section 3-105 of the Public Ethics Law restricts the types of secondary employment in which county employees can participate, in order to avoid conflicts of interest. Specifically, an employee may not: A) be employed by an entity that is subject to the authority of, or that has a

contractual relationship with, the county agency with which the employee is affiliated; B) represent or assist an entity with any matter in which the County has an interest, *except in the course of the employee's official duties*; or C) hold any employment relationship that would impair the impartiality or independent judgment of the employee.

If the employee participated as a board member with the "Friends" organization in a personal capacity, that participation would be prohibited by the above-cited sections. An employee cannot and should not be placed in a position where conflicting loyalties may impair the judgment of the employee, or where the employee might act in a manner contrary to the county's interests.

The only way in which a park employee can sit as a member of the board for the "Friends", is in an ex officio capacity. However, simply designating oneself as an ex officio board member does not make it so. The "Friends" organization cannot assign official duties to a county employee. In order to serve the board in an ex officio capacity, the employee must be assigned to this board by the director of the department or the director's designee. The corporation may request that an employee sit on the board, but the department administrators must determine whether this request would serve the best interests of the agency involved. If the determination is made that ex officio service is to be permitted, the department has the sole authority to determine which employee shall sit on the board. The employee's membership on the board must terminate if the employee terminates employment with the county. The department shall determine the policies and decisions that the employee will support, because the employee's sole duty to the board is to represent the agency's interests. If the "Friends" would like the employee to attend a conference, and decides to offer reasonable reimbursement for that purpose, the proposal must be made to the department, not the ex officio board member. The department administration must determine whether the proposal will fulfill the agency's purposes, and whether the gift is permitted under the Public Ethics Law.¹ If the conference is approved by the department, and if the gift is permitted, it must be a gift to the agency, not the board member. The agency will determine which employee should attend the conference. By following these guidelines, the "Friends" and the parks department can insulate the employee from the potential for decisions that might conflict with the employee's official duties.

The next issue involves fund raising by a county employee. Section 3-106(a) of the Public Ethics Law prohibits a county employee from soliciting any gift. The only exceptions to this rule are for gifts that are solicited: A) as part of a county-wide program; B) with approval from the county executive; C) to fulfill the public purposes and programs established for the government and its agencies; D) to benefit the public, and not county employees; and D) subject

¹ The question of accepting gifts under §3-106 is not part of this inquiry. If the "Friends" organization would be considered a "controlled" or "restricted" donor, the issues of gift acceptance would be significant, but the ethics commission was not presented enough facts to make this determination, and advises that gifts from controlled donors should be considered on a case by case basis.

to guidelines to insure that the government gift solicitations do not create undue pressure or expectations of favoritism on the part of potential donors. (See ethics commission advisory opinions: 99-199, 97-165, 97-122, and 97-41.)

The purposes of the "Friends" organizations certainly complement the purposes and programs of the county's Department of Parks and Recreation, but they are not county programs. The "Friends" organizations support individual parks. For this reason, their memberships do not have the same concerns or priorities as the county government. A "Friends" organization may want to develop an amphitheatre project, a formal garden, or a children's playground, where the county parks department may not be equally enthusiastic. In addition to design and building costs, there will be maintenance and other costs that the "Friends" may not provide. There may be other considerations as well, with needier communities seeking equal facilities from the county that their own organization cannot or will not support.

For these reasons, the ethics commission concludes that participation in fund raising and other forms of gift solicitation by a parks employee in an ex officio capacity with the "Friends", would not fall within the exceptions outlined above. The fund raising projects undertaken by the Friends, while important to the county, are not necessarily identical to the county's best interests, they are not part of a county-wide program approved by the administration, and they may benefit county employees as well as members of the public.

Conclusion:

The ethics commission advises that an employee of the Department of Recreation and Parks may sit on the board of directors of a "Friends of the Park" corporation, subject to the conditions set forth in this opinion. However, an employee may not participate in any fund raising or gift solicitations by the "Friends" organization, and may not lend the name of the county or the employee's own title or prestige of office toward those purposes.

Date:

By: The Anne Arundel County Ethics Commission