

April 29, 1999  
Re: IO-99-80

You inquired whether you could provide guidance and advice to communities, upon request, in landscaping traffic calming devices installed by the county. You also asked whether the communities could order their plants for these areas through the county vendor, which would save the communities money on taxes and shipping and handling charges. The traffic devices are "islands" that are built into the center of the roads, the idea being that with attractive landscaping, the traffic will be "calmer". These islands are installed after a community complains about traffic problems. The bureau of traffic engineering advises these communities that while the county will install these devices, the communities are responsible for the landscaping and planting work.

You were asked by a member of one of these communities, to review the design for the landscaping of one of these islands. You agreed to do so in order to ensure that the plantings chosen by the community would thrive in the island. You also offered to order the plants with part of your next order for the county with the understanding that the community would reimburse the county (or the contractor directly) for the cost of the community's plants. This cost was less than the average retail price for these plants, and the community did not have to pay shipping and handling charges or taxes. The plants were delivered to your location and the community was required to pick up their plants at that point. You did this work during county time and received no compensation from the community. Your supervisor approved your participation in this activity.

You have been asked by another community where traffic islands have recently been installed to help with the landscaping design and you have asked if the ethics law presents any issues under these circumstances. Section 3-104(a) of Article 9, the Public Ethics Law, prohibits an employee from using the authority of the employee's office for the gain of another. The commission generally interprets this provision to prohibit the misuse of an employee's authority for the specific purpose of giving a financial benefit to another person.

Since the county makes the determination to install these islands, it is in the county's interests to make sure that the islands are well designed, planted and maintained. Therefore, it is within the legitimate authority of your office to give guidance and expert opinion to communities who solicit your advice. For this same reason, it is acceptable for the county to assist communities in the purchase of plants, provided that the community reimburses the county for the county's purchase. This conclusion assumes that all communities for which traffic islands are installed and that request it, will have the same access to these services and benefits. To selectively apply these services to some communities and not to others, would violate §3-104 of the ethics law. Also, you would be assisting these communities as a part of your official duties with the county and you could not accept any compensation for these services.

Thank you for your inquiry. If you have any other questions, call me any time.

Sincerely,

Betsy K. Dawson  
Executive Director