

## **Anne Arundel County Ethics Commission**

### **Advisory Opinion**

**00-93**

#### **Issues:**

1. Whether members of the Severn River Commission are "employees" of the county for purposes of the Public Ethics Law.
2. Whether a member of the Severn River Commission, who is also the president of a private entity, may apply for funds from the commission on behalf of that entity, or participate in the commission's decision making process as to the expenditure of those funds.

#### **Background:**

Section 8-403 of the Natural Resources Article, Title 8, of the Annotated Code of Maryland, permits "local governing bodies" with an approved management plan, to establish a scenic river advisory board for each designated scenic river in its jurisdiction. The Severn River was so designated, and the Severn River Commission (the "Commission") became the established advisory board. Resolution 130-84, establishing the Commission, (and R. 47-89, reestablishing it), made its existence dependent upon the adoption of a "substantially similar and essentially compatible resolution" by the City of Annapolis. The city approved its own Resolution, 55-84, on the same day.

According to the terms of the mutual resolutions, the Commission was created to provide advice to the county, the city, and the State of Maryland, to enhance and protect the natural, historic, and scenic quality of the Severn River watershed. The Commission consists of nine voting members and six or more non-voting ex officio members. The county executive appoints seven of the voting members and the mayor of the city appoints two of the members. Each government head appoints a member of their respective legislative bodies as ex officio members, and the county executive invites certain state officials to serve as the other ex officio members.

In practice, the Severn River Commission receives no operating funds from either government. It receives staff support from the Anne Arundel County Department of Planning and Code Enforcement, and holds its meetings in a county government building. The Commission did receive a one-time grant from the county to conduct a study, for which it contracted with an independent entity. The Commission has determined to use excess funds from that grant in a way that will serve the purposes and goals of the Commission. Toward that end, the Commission requested that its members make suggestions as to the best use of the available money.

One of the ideas for the expenditure of the funds, came from one of the Commission members who is also the president of the Severn River Association, ("SRA"). The SRA is a private, non-profit corporation, dedicated to the preservation of the Severn River. Toward that

end, it encourages citizen activism, and supports a number of projects and programs to protect and enhance the quality of the river. The proposal submitted by the Commission member/SRA president, on behalf of the SRA, requests the full amount of the available funding in order to "educate the Severn River watershed's kindergartners through 5th graders about oyster-recovery through language arts materials, a scientifically sound lesson plan, school presentation, hands-on materials and community-based Taylor floats."

**Discussion:**

The first issue before the ethics commission is whether the Severn River Commission is a county commission whose members are subject to the ethics law. In making this determination, the ethics commission has considered the following factors:

- ▶ the appointing authority;
- ▶ the statutory source of the entity;
- ▶ the level of government within which the entity principally functions, and its geographical jurisdiction;
- ▶ the people, groups, or governmental entities to which the Commission is accountable;
- ▶ the nature of the functions performed as being either state or local;
- ▶ the nature of the interests represented by the members of the commission; and
- ▶ the source of staff and budgetary support;

These factors for determining the appropriate jurisdiction were developed in large part by the State Ethics Commission, in concluding that the local sheriff's offices are county agencies, subject to county ethics laws. See, Advisory Opinion 93-12, COMAR, Title 19A. In the present instance, both the city and the county serve as the appointing authorities, and the Commission was created by both county and city resolution. The Severn River lies exclusively within the geographical boundaries of the county, with the city sharing some of the watershed area. Although the Commission provides advice to and otherwise interacts with state officials, the State law requires only that the local advisory board report to the local governing body. It is not required by state law to report to the state. The Commission functions solely within the county. The only source of funding received by the Severn River Commission has been through the county government, along with its meeting facilities and staff support. The citizens of the county and city are the people most directly and consistently affected by the ebb and flow of the Severn River, and those most concerned with the conduct of the members of the Severn River Commission. It is axiomatic that the Commission would not exist, but for the legislative acts of the city and county. For these reasons, the ethics commission concludes that the Severn River Commission is a county and city commission, rather than a state commission, subject to the state

ethics law.<sup>1</sup>

The ethics law, §1-101(f)(1)(ii), provides that members of "any County board, commission, or similar entity, whether or not compensated", are subject to the ethics law. Therefore, since the Severn River Commission is a county commission, its members are subject to the ethics law. The fact that the Commission is a "hybrid" agency does not mean that it should not be covered by any ethics law. Such a conclusion would run counter to the legislative policy behind the ethics law, which states that the "people have a right to be assured that the impartiality and independent judgment of county officials and employees will be maintained." §1-102(a)(1). The ethics law is to be liberally construed to accomplish its purposes.

The most sensible approach is to conclude, as the ethics commission does, that the members of the Severn River Commission who are appointed by the county executive are to be considered county employees for purposes of the ethics law, and those members appointed by the mayor, are to be considered as city employees. It is not for the county ethics commission to determine whether the city employees are covered by the city ethics law. Suffice it to say that the city employees are not covered by the county ethics law.

It is not unusual for employees of one office to be covered by separate ethics laws. The county sheriff is covered by the state ethics law, as is the county State's attorney. The assistant and deputy sheriffs, and assistant state's attorneys, as well as the employees of these offices, are covered by the county ethics law.

The president of the Severn River Association was appointed to the Severn River Commission by the county executive, as was the current second vice-president of the SRA. Another member of the SRA was appointed to the Commission by the mayor of Annapolis. The ethics commission concludes that both the president and the second vice-president of the SRA

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<sup>1</sup> See, e.g., State Ethics Commission Advisory Opinion, 82-5, in which the commission determined that the housing commission of a county was in fact, a county agency for purposes of the ethics law. It reasoned that although state legislation created the county housing authorities, no authority could become operative without a county finding of "need".

are county employees, subject to the provisions of the county ethics law, in their roles as members of the Severn River Commission.

The second issue raised in this matter, is whether Severn River Commission members who are also officers of the SRA, may apply for funds from the Commission on behalf of the SRA, and whether they may participate in any decision making process involving the expenditure of those funds. The applicable provisions of the ethics law are §3-101(non-participation), §3-104(prestige of office) and §3-105 (secondary employment).

Section 3-101(a)(2)(iii) prohibits an employee from participating in any discretionary matter in which one of the parties to the matter is a business entity of which the employee is an officer, director, trustee, partner, or employee. The SRA is a party to the matter, in that it seeks the award of a grant. The Commission members involved are officers of the organization. Therefore, they may not participate as Commission members in any activity, including discussion, debate, or vote, pertaining to the award of the funds by the Severn River Commission, as long as the SRA is an applicant.

Section 3-104(a) prohibits an employee from using the prestige, title or authority of the office or the position for the employee's private gain or the gain of another. The ethics commission has interpreted this provision to mean that an employee may not misuse, or abuse the authority of the office for the financial gain of another. When the Severn River Commission requested proposals or ideas about how to best use this money, it sought those ideas only from its members. It did not solicit outside organizations. It is inappropriate, under §3-104(a), for the officer of a private organization to use the authority granted only to Commission members to promote a proposal to benefit that organization, without the same opportunity being afforded to other groups.

Finally, §3-105, which regulates and limits secondary employment that may conflict with county duties, prohibits a county employee from representing or assisting any person or entity in any matter in which the county has an interest. The ethics commission has interpreted this provision to refer only to interests that may conflict or compete with the county's interests. Since the Severn River Commission may have its own ideas about how the money should be spent, the ethics law would prohibit a Commission member from promoting the potentially competing interests of a private entity.

### **Conclusion:**

The ethics commission advises that the Severn River Commission is at least in part, a county commission, and that those voting members appointed by the county executive, are "employees" of the county for purposes of the county Public Ethics Law. The commission further advises that members of the Severn River Commission, who are also officers of a private entity, may not apply to receive funds from the commission on behalf of the private organization they represent, or participate in any commission activity relating to the expenditure of commission funds, while that private entity's proposal is under consideration.

Date: \_\_\_\_\_

By: the Anne Arundel County Ethics Commission