

Anne Arundel County Ethics Commission

Advisory Opinion

01-107

Issue:

Whether a county council member may accept an offer to participate in the production of a five- minute interview with the local cable television franchisee, to be aired on the Headline News channel.

Facts:

The members of the county council were invited to tape an interview with the local cable television franchisee, to be aired during the five- minute access time provided to the franchisee on the Headline News network. Upon acceptance of the invitation, the council member was provided with a "prep sheet" to help the franchisee prepare for the interview. Included on the prep sheet was a request to "please list 2 or 3 main points you want to discuss during the interview." The council members were advised that the interview would take no more than 15-20 minutes.

In the past, the franchisee has aired interviews with a number of government officials from state and local jurisdictions, leaders of various business and charitable organizations, and organizers of community events. These public service announcements are required by federal regulation although the format is left largely up to the cable television franchisee.

Discussion:

The ethics commission previously addressed this question in AO-99-212. That opinion, based on information given by the requestor, determined that the interview was essentially a speech, with the questions and the answers prepared by the council member, and offered in an interview format. Now it appears that the council member's only input will be to identify some points to serve as a basis for the conduct of the interview. These facts suggest that the franchisee is indeed in control of the editorial content of the production. If the franchisee is directing the questions, albeit with some subject matter guidance from the interviewee, then the interview becomes less an instance of self-promotion and more a case of legitimate news dissemination.

Although the ethics commission previously determined that the interview was a gift,¹ the facts now suggest otherwise. As long as the franchisee conducts a legitimate interview, with

¹ In an informal opinion, dated May 6, 1996, the State Ethics Commission also advised that the "production of public service announcements were gifts." Under state law, the gift was permissible for state legislators but required disclosure by the provider on the lobbying activity report.

questions written by the franchisee, and as long as the content of the interview is determined and controlled by the franchisee, the interview may not be a gift. Arguably, the consideration for the free airtime access is the council member's agreement to be subjected to questions that the council member may not like.

However, it is important to bear in mind that the franchisee is a controlled donor, whose contractual relationship with the county is dependent to a large extent, on the county council's good will. In this way, the relationships between the members of the county council and the franchisee are very different from the franchisee's relationships with other government officials who have participated in these interviews. Other government officials have little or no impact on the operations of the franchisee. But as to the Anne Arundel County Council, the franchisee is "doing business with the county," "engaged in activities that are regulated or controlled by the county," has "financial interests that may be substantially and materially affected . . . by the performance of non-performance of any official duty of the [county council member]," and may be a lobbyist with respect to matters within the jurisdiction of the [county council member].² §3-105(b).

For these reasons, it is not likely that the franchisee is apt to ask difficult questions, or to produce any interview that will displease the council member. The franchise agreement has been signed, and there appears to be no design to impair the council member's independent or impartial judgment in any currently pending matter. However, there is a fine line between a legitimate news interview, which this situation appears to be, and a self-promotional opportunity, which is a gift. The council member should be aware that if there is pending legislation or any ongoing dispute between the county and the franchisee, the interview may appear to be more like a gift than it does in the present circumstance.

Conclusion:

The ethics commission advises that the county council member may participate in the interview offered by a local cable television franchisee, subject to the guidelines set forth in this opinion. As long as the interview questions are written by the franchisee, and as long as the franchisee maintains and exercises editorial control of the content of the interview, the production does not appear to be a gift. However, if the interview is conducted during the pendency of legislation affecting the franchisee or any contract dispute between the county and the franchisee, the council member should consider whether the member's participation in a taped interview would create the appearance that it is a gift being offered by a controlled donor with a design to influence the judgment of the recipient.

Date:

By: The Anne Arundel County Ethics Commission

² Although the local franchisee is not registered to lobby in the county, it is apparently participating in the preparation of legislation that will affect its road cutting work in the county. This activity may constitute lobbying within the definition of §1-101(q)(1).