

## Anne Arundel County Ethics Commission

### Advisory Opinion 02-88

#### Issues:

1. Whether a county employee may accept partial rent payments from citizens.
2. Whether the county may accept money from citizens toward rent owed to the county by a county employee.

#### Facts:

Until November 2000, some local county park rangers, or park caretakers, were permitted to live in county owned houses located on county park property, without paying any rent on these properties. The free rent was considered to be part of the compensation package, and so the ranger's direct compensation was less than it would otherwise have been. This arrangement continued for a number of years, until the county abruptly stopped it. The county notified various park employees that as of November 2000, they would be required to pay a monthly rental amount equalling the fair market value of the properties. Although the Department of Recreation and Parks requested additional budget appropriations in order to add to the direct compensation of these employees, the budget request was not approved. As a result, the employee ranger who is the subject of this opinion, has had an increase in expenses of approximately \$1000 per month without any adjustment to the ranger's compensation.

Upon learning of this change in county policy, the ranger's spouse advised some of the neighbors that they would not continue to live on the property if they were required to pay rent. The neighboring residents responded by contacting and meeting with the county administration to see if the policy could be changed to permit the ranger to continue to live on the property. Receiving a negative response from the county, the neighbors unilaterally began a fund raising effort among themselves. The park ranger and the spouse of the ranger neither solicited, nor participated in this effort. The efforts were very successful, so that the fund now pays about 40% of the rent on the cottage where the ranger resides. The donors expect to continue these rent subsidy payments until November 2003, which is the ranger's anticipated retirement date.

The neighbors and donors to this fund reside in three neighborhoods in the immediate vicinity of the park. They consider the ranger to be an exemplary employee, as their efforts have shown. They have stated that the ranger keeps the park clean, environmentally sound, and safe. As one of the residents stated in the initial fund raising letter, dated July 7, 2000, ". . . we must take immediate action ourselves, or risk the consequences of leaving the park open and unsupervised - consequences that we fear will lead to vandalism, environmental damage and problems of security and safety for those who enjoy its trails and facilities". (*Emphasis in original*).

The park involved in this inquiry is a very narrow spit of land, about one mile in length, surrounded on both sides by water. People with fishing licenses may fish from the shore, and there are a couple of picnic tables at the end point of the park. There are very limited camping facilities which are available by prearrangement to organized groups, mostly children's groups. An unpaved road runs the length of the park, from the gate to the end of the point.

The ranger's duties include maintaining the park facilities, and issuing 60 monthly permits on a first come, first served basis. The only benefit of holding a permit is the right to drive into and through the park. Anybody may walk or bike into the park and use the facilities. Apparently of the 120 permits issued in the months of July and August, 2002, only one was issued to a neighborhood donor. For most residents of the communities adjacent to the park, neither a car, nor a permit would be necessary for full park access. Almost all of the permit holders live outside of the three communities closest to the park. Many permit holders reside outside of the county. There has been no allegation or evidence that the ranger issued any permits in exchange for a donation to the rent fund by any neighboring resident. On the contrary, the ranger has apparently not been made officially aware of the names of the donors to the fund.

#### **Discussion:**

Two provisions of the ethics law are relevant to this inquiry. The first one, §3-104(a) prohibits an employee from using the prestige, title, or authority of the employee's office or position for the employee's private gain. It is precisely because of the employee's position that the contributions toward the rent were collected by the donors. The ethics commission has previously advised that compensation from outside entities may not be accepted by a county employee for performing work that is part of the employee's normal job. See, IO-99-80. This prohibition applies even though the employee did not actively seek the contributions. See, IO-00-103. By accepting the contributions, the employee is accepting a personal, financial gain that is given because of the authority of the employee's office. The offer of rent payments to a county employee is comparable to the offer of a gratuity given to police officers, firefighters or paramedics for services rendered. The motivation behind the gift is honest, genuine, and heartfelt, but acceptance of such a gift - if its value is more than nominal - is still prohibited by §3-104(a).

Section 3-106(b) prohibits county employees from accepting gifts from controlled donors. In the present case, the neighbors who contributed to the rent fund are mostly property owners in the neighborhoods surrounding the park. The neighbors are legitimately concerned about the property values in their community, as well as their safety and the condition of the park. Arguably, if the park is left unsupervised, it will deteriorate, and the effect may be to decrease the surrounding property values. Because they "have financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of any official duty of the employee", they are controlled

donors. §3-106(b)(3).

There are occasions when the county may accept gifts from the public, even if employees may not accept them. However, gifts given to the county must be used for the public benefit of county citizens, not the private benefit of county employees. *See e.g.*, IO-00-152, IO-00-46, IO-99-79. In this case, payment of rent primarily benefits the employee, with residual benefits accruing to the neighbors. This is not a gift to the county or to the Department of Recreation and Parks, regardless of the name on the check.

**Conclusion:**

The ethics commission reluctantly advises that a park ranger may not accept rent subsidy payments from the neighbors of the park. Acceptance of this gift violates §§3-104(a) and §3-106(b) of the Public Ethics Law. The commission issues this advice reluctantly, because the commission members believe that the park ranger simply got a raw deal from the county government. The commission has no jurisdiction over the propriety of the county's decision to change the ranger's contract without payment of additional compensation, but as citizens themselves, the commission members are disappointed with the county's actions. At the same time, the ethics commission questions the decision of county officials to accept these payments without first reviewing the ethics law or consulting the ethics commission.

Date:

By: The Anne Arundel County Ethics Commission