

Anne Arundel County Ethics Commission

AO-02-91

Issue:

Whether the county executive violated the Public Ethics Law by airing a political campaign advertisement that featured two photographs of the county executive with uniformed members of the Anne Arundel County Police Department.

Facts:

The incumbent county executive has aired a campaign advertisement on a number of cable television stations. The 30 second ad features 12 still photographs, upon which are superimposed short phrases, such as "preserving farmland" and "creating jobs". There is also a voice over that mentions the accomplishments claimed by the candidate during the past three years of her first term. A couple of the photos feature the county executive with school age children, a couple of the photos feature people who might be farmers, and a couple of the photos feature other people standing with the county executive. Two of the still photographs feature the county executive standing beside uniformed police or other public safety officers.

The photographs were not posed specifically for the creation of this advertisement. Instead, the photos are part of the county's archival material, created by the county executive's staff. The photos are kept in the possession of the county executive's office where they are made available to the public upon request. Copies are also given as gifts or mementos to mark the occasions the photos represent. It is apparent that the photos were not made for the advertisement, with the possible exception of the first photo, which is simply a close shot of the county executive. These are photos that were taken to cover specific events.

Discussion:

In AO-98-139, the ethics commission advised that,

It is a violation of the Public Ethics Law, §3-104 for a supervisor to request or order an employee to appear in campaign literature. It is particularly inappropriate for that order or request to include the use of the uniform and the use of county time. It violates the same section of the ethics law for an employee to knowingly appear in campaign advertising while in uniform and during the work day.

The photos used in the present ad were not taken for campaign purposes. There were no requests by the county executive or her agents, for uniformed officers to appear in campaign photos, and the officers who appeared in uniform, appeared in those photos in conjunction with their official duties. For these reasons, the advice offered in AO-98-139 is not applicable in this

case. See also, AO-02-23.

The concern in this case is whether the use of archival photographs owned by the county violates §3-104(a), which prohibits the use of the title, prestige, or authority of the office for personal gain. The ethics commission has interpreted this provision to prohibit the use of certain types of county property or resources for personal gain. See, e.g., IO-98-17(prohibiting use of county resources to promote cell phones offered to county employees by a private entity), IO-00-22 (prohibiting sale of candy by employee on county property), and I-97-21 (prohibiting use of Email for commercial gain). In cases where the use of county property or resources was prohibited, the property and resources in question were only available to county employees. These resources are available only because the employees had the authority of their positions to use these resources.

In the present case, the archival photos used by the county executive are public documents, accessible to anybody. While they are county property, they are not restricted to the use of county employees. Therefore, it is not an abuse of an employee's authority to acquire or use the photos in the appropriate context. As long as the county did not pay for the copies of the photos, §3-104(a) does not prevent their use.

The ethics commission acknowledges that incumbents running for re-election may be perceived as having an advantage in that they have a "record" upon which they campaign. It is customary, if not necessary, for incumbents to promote themselves by highlighting their achievements as office holders. While a picture may be worth a thousand words, is a candidate limited to using words to describe those accomplishments?

Finally, while the possibility exists that the pictures of the county executive standing with public safety officers may appear to be an endorsement by those officers or their departments, the ethics commission concludes that in the context of this advertisement, the possibility is remote. The ad specifically refers to the candidate's accomplishments with a series of pictures. It is simply unreasonable to conclude that employees endorse an incumbent because they appeared with the incumbent in public at an official function as part of their official duties.

Conclusion:

The ethics commission advises that the use of publicly available archival photographs in campaign literature to describe the activities of an incumbent during a term of office, does not in and of itself, violate the Public Ethics Law. If the photos were used to affirmatively suggest or imply an endorsement of the incumbent by public safety officers or if a reasonable inference could be drawn that the photos constituted an endorsement, the ethics commission's conclusion would be different.

Date:

By: The Anne Arundel County Ethics Commission