

August 13, 2002

Re: IO-02-95

You inquired whether and to what extent the Public Ethics Law limits the official duties of an employee who is acting as the campaign treasurer for a candidate for county office. The employee is a supervisor in the zoning enforcement division. You expressed concern over the possibility that the supervisor may receive zoning matters that involve the candidate or others who may make campaign contributions to the candidate. This letter is for the purpose of giving general advice only, to respond to your general concerns. If matters that arise for which you need specific advice, you should make an additional request. Also, since this letter addresses only the ethics law, you should consult with the Offices of Law and Personnel to discuss the options available to you to insulate the zoning enforcement office from concerns about conflicts of interest.

The anti-Hatch Act, Art. 24, §§13-103 *et. seq.* of the Annotated Code of Maryland, guarantees that all local government employees may participate freely in political activity¹. The only relevant limitation on participation is that an employee may not engage in political activities during work hours or in the work place. §13-105. The law prohibits local governments from imposing any other limitations on this participation. §13-104.

For this reason, the employee's position as the campaign treasurer for a candidate is not subject to the ethics law restrictions on secondary employment. One of those restrictions, §3-105(b)(2), prohibits an employee from having any employment relationship that "would impair the impartiality or independent judgment of the employee." If the employee is in the position to assign or supervise the handling of a zoning enforcement case against the candidate or potential campaign contributors to the candidate, the provision might be applied to prohibit the position.

Another ethics law restriction that does not apply in the present case, is §3-106(a), which prohibits a county employee from soliciting gifts. Under the anti-Hatch Act, an employee may not be prohibited from soliciting campaign contributions, even from donors over whom the employee's agency exercises authority, or with whom the county does business. Campaign contributions are not considered to be gifts under the ethics law. §1-101(1)(3). The solicitations may not occur in the workplace or on county time.

The state's preemption of the subject of political activities causes concern because the employee's official enforcement duties may conflict with the employee's loyalty to the candidate or the candidate's financial supporters. But while the anti-Hatch act precludes the county from restricting employee's political activity, it does not preclude the county from restricting the employee's official duties. The ethics law prohibits an employee from participating in any matter in which one of the parties to the matter

¹ Although state law does not define "political activity", the federal Hatch Act defines political activity as ". . . an activity directed towards the success or failure of a political party, candidate for partisan political office, or partisan political group." See 5 U.S.C. §§7321-26, 5 C.F.R. Part 734.101

has a business, contractual, or other financial relationship with the employee. §3-101(a)(2)(i). It also prohibits an employee from participating in any matter in which one of the parties to the matter has an existing contract with the employee. §3-101(a)(2)(v).

As the candidate's campaign treasurer, the zoning inspection supervisor is an agent of the candidate. Cicoria v. State, 332 Md. 21 (1993). §1-102(c). The principal-agent relationship is contractual in nature because it involves mutual assent - an offer and an acceptance of the offer. Pyles v. Goller, 109 Md. App. 71(1996). Because of the contractual relationship between them, §§3-101(a)(2)(i) and (a)(2)(v) prohibit the employee from participating in any zoning matter in which the candidate has an interest.

These prohibitions were enacted to guard against improper influence and even the appearance of improper influence in the decisions and actions of government employees. §1-102(b). Toward that end, the ethics law is to be liberally construed. The ethics commission believes that if the employee participates in any zoning matter involving a contributor to the candidate, a person could reasonably conclude that a conflict of interest exists for that employee. An agent has a fiduciary duty to promote the principal's interests to the exclusion of all other interests. Cicoria v. State, *supra*, at 40. That duty requires the campaign treasurer to promote the candidacy. It could reasonably be perceived that a potential zoning violator would be more likely to make a campaign contribution if a potential zoning violation "goes away." It could also be reasonably perceived that a campaign contribution is expected if a zoning violation "goes away." A reasonable perception may exist that the employee is using the authority of the employee's office for the candidate's financial gain, in violation of §3-104(a) of the ethics law.

This conclusion is not meant to impugn the integrity of the employee. On the contrary, the ethics law is intended to preserve the employee's reputation for impartiality by ensuring that the employee will not participate in matters that may lead to the appearance of improper influence in the decisions made by the employee.

For these reasons, the ethics commission advises you that the employee's position as a supervisor of zoning enforcement puts the employee in a difficult situation with respect to the employee's political activity. The commission suggests that the employee refrain from participating in zoning enforcement matters where campaign contributions may be an issue. The ethics commission cannot suggest ways to accomplish this goal, and reiterates its suggestion that you contact the law and personnel offices for guidance.

Thank you for your inquiry. Please contact the ethics commission if you have any other questions.

Sincerely,

Betsy K. Dawson
Executive Director