

September 25, 2006

By Electronic and Interoffice Mail

Re: IO-06-76

You inquired whether a council member may accept an invitation from Comcast Cable Communications, Inc. to record a five-minute “Candidates on Demand” segment. The invitation is being offered to all primary election winners – some of whom are not members of the county council. The “interview” as it is called, is offered to “give you an opportunity to discuss the issues that are a priority for you and the voters in your area.” The issue of accepting this invitation arose because Bill 92-06, to renew the franchise Comcast holds to operate its cable system in the county, is now pending before the county council. Specifically, the bill was introduced on September 18, 2006, and the public hearing is scheduled for October 16th. The interviews are scheduled for October 6th.

The ethics commission advises, albeit reluctantly, that the council members who won their primary elections, may accept this invitation. As a general rule, gifts offered by “controlled donors” may not be accepted if “the gift would give the appearance of impairing the impartiality and independent judgment of the employee, or the employee believes or has reason to believe that the gift is designed to impair the impartiality and independent judgment of the employee.” §7-5-106(c).

The ethics commission has previously issued two opinions on this subject. In AO-99-212, the commission advised that,

The offer of a five-minute promotional opportunity, or “interview” as it has been dubbed, is in reality, the offer of a gift to the members of the county council, by a controlled donor. As a gift, it cannot be accepted unless it falls within a specifically permitted exception to the prohibition against accepting gifts from controlled donors. It does not. Even if it were a permitted exception, council members who accepted the gift would be precluded from participating in legislation that would affect the franchisee, under the provisions of §3-102(a) and (b)(2)(iii) of the Public Ethics Law.¹

In that inquiry, there was legislation pending before the county council when the invitation was made, and the timing of the invitation suggested an intent to impair the independent judgment of the council members.

In AO-01-107, the commission reconsidered the question. In that opinion, the commission advised that as long as Comcast retained editorial control over the interview, it would not be considered a gift, and could be accepted. In this case, there was no legislation pending when the invitation to accept a free interview was offered.

¹ This conclusion was reached in part, based upon a State Ethics Commission opinion issued in 1996, advising that the invitation to participate in a public service announcement was the offer of a gift.

Based upon the opinion in AO-01-107, the ethics commission concludes that if Comcast retains editorial control over this interview, it will not be considered a gift and its acceptance will not be prohibited. If the candidate has the sole discretion to prepare the interview questions, the invitation would be the offer of a gift. In the latter case, however, the gift would probably be considered a campaign contribution. The ethics commission has no legal authority to determine whether a campaign contribution may be accepted, or whether council members may participate in legislative action affecting Comcast if they accept the so-called "campaign contribution."

For these reasons, the ethics commission cannot justifiably conclude that council members to whom the invitation was extended may not accept it. The commission notes however, that with pending legislation, some people may reasonably conclude that the invitation is offered at this particular time in an effort to encourage the renewal of the franchise currently held by Comcast. On the other hand, the commission acknowledges that it would be disadvantageous at best, for a council member candidate to turn down an invitation that will undoubtedly be accepted by that council member's opponents.

Without intending to "pass the buck", the ethics commission concludes and therefore advises, that the ethics law does not clearly and unequivocally prohibit a council member from accepting the invitation extended by Comcast.

Thank you for your inquiry.

Anne Arundel County Ethics Commission

By: _____
Betsy K. Dawson, Executive Director