



*Anne Arundel County
Ethics Commission*

August 5, 2009

By Electronic Mail Only

Re: AO-09-49

You inquired, on behalf of the county executive, whether the county executive may appear in a video to endorse a local church's fundraising efforts to build a LifeStation® center for the use of teenagers. The request came by electronic mail from the church's executive pastor.¹ The [LifeStation](#) facility is the creation of [LifeStation International](#).²

Information from its websites indicates that each LifeStation facility is operated by a locally created independent 501(c)(3) organization, subject to a licensing agreement with LifeStation International. The licensing agreement contains programming guidelines, menus for the facility's use, and training programs.

There are a number of issues that are raised by this inquiry. The first issue concerns the prohibition on the use of the prestige of office for the gain of another. §7-5-107(a). Since this

¹ The pastor's e-mail (redacted version):

Hey --- -

I hope that all is well on your end... I wanted to touch base with you once again to see if Mr. Leopold would like to be included in a video that is being produced in support of the LifeStation... It will be used to inform and to promote throughout the Fund Raising phase of the project... We would like to include his endorsement as a part of the video... Let me know if there is anyone else that you think we should also consider including... Here is a link to the first version of a web site for the Life Station-www.annapolis.life-station.org...

Thanks...

² According to its website, <http://life-station.org/page/home>, the organization known as LifeStation, is "an outreach ministry of Building God's Way. Building God's Way (BGW) is one of the largest church and school builders in the United States." [BGW](#), which describes itself as "a network of kingdom building services" has its national headquarters in Ogden, Utah. It provides architectural, engineering, construction, planning, funding solutions, and supply services through various affiliates. For example, one of its affiliates is Cornerstone Supply, incorporated in Utah. A cursory search revealed no corporate or charitable records for these organizations in Maryland.

prohibition also implicates the restrictions on charitable solicitations found in §7-5-106(a), these issues were considered together.

Over the years, the commission has issued a number of advisory opinions to county employees seeking to promote or endorse private entities. The opinions support the notion that this provision generally prohibits county employees from using the prestige of their offices or positions, to promote or otherwise endorse the commercial or charitable activities of private entities unless the same opportunities are offered to others on an equal basis. [AO-98-92](#), [IO-05-61](#), [IO-00-179](#), [IO-00-139](#), [AO-97-114](#). This prohibition extends to the use of county resources as well. [IO-98-80](#).

On the other hand, the commission has acknowledged that the county executive has the authority to select charitable activities that the county will promote, under certain circumstances. In [AO-99-175](#), for example, the guidelines for charitable promotions and fundraising permitted those solicitations that were part of a county-wide program; had the county executive's approval; and fulfilled the *public purposes and programs established for the government and its agencies*. Using this reasoning, the ethics commission advised that the county could promote and solicit gifts for the United Way Campaign of Maryland, the Maryland Special Olympics Torch Run ([IO-02-31](#)), American Cancer Society's Daffodil Day ([IO-03-08](#)), cultural arts foundation events ([AO-98-95](#)) and a number of other county programs. See also, [IO-06-17](#), [AO-08-25](#), [AO-07-09](#), [IO-02-129](#), [IO-00-95](#), [AO-98-92](#), [AO-97-140](#), [AO-97-122](#), [IO-97-87](#).

One difference between all these earlier charitable endeavors and the current situation is that in all of the previous projects, agencies of county government actively participated in the effort: the police department participated in the torch run and sold t-shirts to employees, the county participated in the sale of daffodils, and the cultural arts foundation is a quasi-public corporation that works with the county.

The LifeStation project is a wholly private endeavor. There is no county agency involvement and it promotes no specific county program. The absence of agency involvement in the charitable endeavor is significant. Where a wholly private charitable fundraiser has no nexus to specific county programs or specific government purposes, it does not fall within the long-established guidelines for the county executive's endorsement.³ If it is not in furtherance of a county program, and if it is not a "usual and customary constituent service,"⁴ it falls within the prohibition of §7-5-107(a).

³ The ethics commission also notes that while the generalized purpose in developing the LifeStation facility is to help young people, the licensing agreement to operate the facility includes "programming guidelines," which are developed by a clearly religious organization. This fact does not raise issues under the ethics law, but it may raise first amendment issues. On its website, the LifeStation International describes its vision "to see LifeStation facilities in every community of 25,000 or more in North America and in strategic areas around the world. Our vision is to be used of God in reclaiming this generation of young people for Christ's kingdom."

⁴ As interpreted by the ethics commission, constituent services are "services performed without favoritism for any constituent in the same or similar circumstances as any other constituent seeking those services." [AO-98-92](#).

The prestige of office provision presents another obstacle to the county executive's endorsement. In order to build this facility, the church will undoubtedly require approvals from various departments- planning and zoning, inspections and permits and possibly others. Under the county charter, §405 and §502, the county executive has the authority to "supervise, direct, and control" the executive branch. While the ethics law does not strictly prohibit the county executive from participating in this project because of ongoing county oversight, the ethics commission advises that such participation would create the appearance of a conflict of interest. One might reasonably assume that the approval processes required for the building of the LifeStation facility will move quickly if the county executive endorses the project. For this reason, it would be advisable- albeit not strictly required - for the county executive to wait until the process is completed. Of course, since the building project will require ongoing county regulation, participation may not be advisable at any time when it might be effective.⁵

For these reasons, the ethics commission advises that the county executive's endorsement of a wholly private charitable project would violate the letter and the spirit of the ethics law, even assuming that the non-ethics first amendment issue raised by this inquiry is not decisive. The county executive's endorsement of a private charitable project without any nexus to county programs would constitute the use of the office for the "gain of another." It would not constitute constituent service since it is not available to all on an equal basis. Finally, an endorsement of a private entity that is subject to regulation by agencies under the control of the county executive would create a very reasonable appearance of improper influence.

Thank you for your inquiry. Please contact the commission office if you have any additional questions.

The Anne Arundel County Ethics Commission

/s/

By: _____
Betsy K. Dawson, Executive Director

⁵ The county executive's participation in this project would also be prohibited if the church or other organizations involved in the project are required to register as lobbyists.