

Queen Anne's County Ethics Commission



2010 Annual Report

Introduction

The Maryland General Assembly enacted the State Ethics Law in 1979. The purpose of the law is to protect the public's confidence and trust in government by assuring the impartiality and independent judgment of State officials and employees. The Maryland Public Ethics Law requires local jurisdictions to enact provisions that are similar to the State Public Ethics Law. The Queen Anne's County Commissioners have complied with this requirement through the passage of and amendments to the Queen Anne's County Public Ethics Law.

The Queen Anne's County Ethics Commission administers the County's Public Ethics Law (Chapter 8 of the Queen Anne's County Code) by encouraging and enforcing compliance with its requirements. The Commission does so by various educational and informational outreach efforts, issuance of Advisory Opinions, consideration and resolution of Complaints, ensuring compliance with public financial disclosure requirements of various County officials and employees, and overseeing lobbyist registration and annual reporting requirements – all more specifically described below.

The Ethics Commission consists of five members and one alternate. Commission members serve a five-year term, and the terms are staggered. In this way it is possible to acquire new ideas and perspectives without sacrificing continuity and experience. At the start of the year in 2010 the Commission consisted of Robert C. Mueller, who was elected chairman for the calendar year by a vote of the Commission, and Kendall R. Ruffatto, Reverend Nanese Hawthorne, Benjamin C. Tilghman, Harold O. Wilson, and Neal R. Jackson as Alternate. Mr. Jackson resigned his position during 2010 to run for election to the post of County Commissioner.

The Commission meets formally once a month, usually on the third Monday of each month, in the County Commissioners' Hearing Room in the Liberty Building in Centreville. Members of the public are welcome to attend the open sessions of each meeting. During the open portion of each meeting the Commission discusses the status of financial disclosure reports,

ethics training, requests for advisory opinions and other issues, and hears comments from the public. If necessary, the Commission also meets in a closed or executive session to conduct confidential business generally including discussion of requests for advisory opinions, complaints and the progress of any investigations, and to consult counsel. Hearings on complaints of ethics violations are also handled during closed sessions. All final actions of the Commission are taken in the open portion of the meeting as required by Section 8-8D of the Queen Anne's County Code.

The Commission is staffed by a part time clerk, Tina Miles, and is advised by an attorney, Lynn Knight, who is appointed by the Commission with the approval of the County Commissioners.

Education and Outreach

The Ethics Commission continued its efforts to educate County employees and officials as well as the public regarding the Ethics Code, by making available on the website one page fact sheets on conflicts of interest, gifts, financial disclosure and, new this year, lobbyist registration. Also available on the website was the Ethics Commission's 2009 Annual Report which includes summaries of all the Advisory Opinions issued in 2009. The Commission spent considerable time creating and distributing a brief summary of the Ethics Law as it pertains to Lobbyists, and ultimately created and sent the summary along with a cover letter to all organizations within Queen Anne's County that might appear before various Boards and Commissions as lobbyists. These organizations included, but were not limited to, developers, contractors, real estate agents, engineering firms, public interest groups, and organizations known to have conducted business with County Offices in the past.

Advisory Opinions

In 2010 the Commission issued 11 Advisory Opinions either upon request, or initiated by the Commission itself as a result of issues raised during its regular meetings. Each opinion, redacted as necessary to preserve confidentiality, is announced during the public portion of meeting and becomes available to the public in written form after notification of the individual requesting the opinion. Unlike a Complaint, Advisory Opinions are as the name states, advisory in nature, and an opinion on an ethics matter rendered by the Commission. Advisory Opinions are based solely on the facts presented by the individual(s) or party requesting the opinion. The Commission does not conduct any investigation of the facts (although it may, on occasion, ask for clarification), and the opinions are not binding. The following summary of the 11 Advisory Opinions from 2010 should be used as a guide only, and must not be utilized in place of the entire opinion.

10-1

At the request of a member of the Board of Commissioners of Queen Anne's County, considered the possibility of a conflict in the case of two applicants for the County Planning Commission. In the case of Subject 1, the Ethics Commission advised that Subject 1's involvement in "real estate brokerage, consulting, development & construction, (and) investments", ownership in various business entities, and Subject 1's ownership, or partial ownership of some 25 parcels of land in Queen Anne's county, some already under consideration for development, was so broad and pervasive that recusal was not a workable remedy to what appeared to be a violation of the Ethics Law 8-11.A(2). The matter of Subject 2 involved a prospective member whose daughter worked for an engineering firm that did extensive business in Queen Anne's County. The Commission found that Subject 2 could serve on the Planning Board, but must rescue himself from all matters in which the engineering company would be participating.

10-02

Concluded that an employee of the County Administrator's office would create an appearance of a conflict by providing paid yoga lessons to clients of the Department of Aging. (This opinion was later superseded by opinion 10-04)

10-03

Considered if there would be a conflict if the daughter of an employee of the Parks and Recreation Department submitted a bid to become a vendor of a food concession stand in the 4H Park. The Commission determined that because the process was a sealed bid, and the County employee's duties were in a different division of the Parks and Recreation Department there was no conflict, or appearance of a conflict.

10-04

Based on additional facts provided to the Commission in the matter of Opinion 10-02, the Commission concluded that there was **not** an appearance of a conflict since the provider of yoga lesson's service had preceded by three years her employment in the County Administrator's office, and the contract had not been changed since her employment began.

10-05

The Commission advised that no violation of the Ethics Law would occur in the sale of advertising in the Senior Times to raise funds for the Commission on Aging. The advertising was not determined to be a gift, but rather billing for services provided.

10-06

The Commission considered whether there would be a conflict if an individual were to become president of the Local Management Board and remain as a secretary for a group which has received grant funding from LMB in the current and prior years. The Commission concluded there would be an appearance of a conflict.

10-07

Responded to a request for an advisory opinion in the case of a Planning Commission member who is a brother to the grandmother of a “developer” appearing before the Planning Commission. Given the facts presented, and without any additional information on specific family dynamics, the Commission concluded that the relationship was so remote that an informed member of the public would not reasonably believe that a conflict existed.

10-08

The Commission was asked to consider the case of a county employee’s father running for County Commissioner where the employee was the director of a county agency. The Commission determined that a conflict, or an appearance of a conflict, would exist in any matter appearing before the County Commissioners concerning the son’s agency, and that the father would have to recuse himself from any activity involving the agency in question.

10-09

Determined that a gift of a book and a T-shirt to the County Commissioners and a few employees was not a violation of the Ethics Law since the unsolicited gift was of nominal value.

10-10

Advised that an employee of the County could be the volunteer moderator for the League of Women Voters forum without violating the County Ethics Law.

10-11

Considered whether an employee of the County could accept a gift by a supplier of services to the county of the cost to attend a Golf Outing and Seminar, and concluded that there would be an appearance of a conflict unless the employee paid the cost himself.

Financial Disclosure

The Queen Anne’s County Public Ethics Law, Chapter 8 of the Queen Anne’s County Code, requires that elected County officials, certain employees, members of decision-making-authority boards or commissions, and various other individuals disclose their financial affairs annually, as well as upon employment/appointment and upon leaving office, as a tool to guard against conflicts of interest and to assure the public that Queen Anne’s County business is being properly conducted.

In 2010, the Commission received and reviewed 250 financial disclosure statements. The deadline for filing the annual financial disclosure statement is January 31st.

Complaints

The Commission heard two complaints in 2010. These complaints were to some degree related in that they both addressed the qualifications and suitability of citizens to serve on the County Planning Commission. At a general level, the principles involved are relatively straightforward, but the details are extremely important to the conclusion. Consequently, the Opinions in both these complaints are very detailed and very carefully worded. The summaries that follow provide only a broad and very general outline of the circumstances of the complaint and the Commission's conclusions. Under no circumstances are the summaries that follow to be used in place of the actual language in the Opinions themselves.

Complaint 10-01

A group of citizens of Queen Anne's County filed a complaint with the Commission regarding an appointment of an individual to the County Planning Commission. The complaint alleged that the Planning Commission member's historical and current real estate activities present actual and/or apparent conflicts of interest with his service on the Planning Commission. The Commission retained an outside law firm, pro bono, to conduct an independent investigation of the facts and circumstances. Upon receipt of the investigative report, the Commission held a formal hearing and concluded, by a preponderance of evidence, that the Planning Commission member's holdings and those of his family in certain business entities and ownership of real estate throughout the County, as well as other investments present both actual and apparent conflicts of interest. The Commission ordered that the planning Commission member recuse himself from any matter which had, or appeared to have, any direct financial impact on his business, or any of the businesses in which his family holds an interest. Additionally the Commission directed that the Planning Commission member cease and desist from any activity on the Planning Commission involving the Queenstown Comprehensive Plan and any activity related to the extension of water and sewer service in a certain part of Kent Island.

At the special meeting which made official the above opinion, a citizen asked for clarification of the word "recusal" since the term is not used in the County Ethics Law. At that meeting the Commission responded that recusal meant having no involvement with the topic. In a subsequent meeting in January 2011, the Commission expanded on the clarification, stating that "recusal" meant to disqualify oneself entirely, physically as well as conversationally, from any official involvement whatsoever in the matter under consideration.

Complaint 10-02

A citizen filed a complaint regarding a Planning Commission member's refusal to recuse herself from considering a matter involving the Queenstown Comprehensive Plan. The person submitting the complaint relied upon a statute that was inapplicable to the Planning Commission and not within the authority of the Ethics Commission, rendering the complaint invalid. The Ethics Commission chose, however, to consider the substance of the complaint under provisions of the statute within the Commission's jurisdiction, since the issue was indeed one that merited a response. The Commission concluded that there was no violation of the County Ethics Law.

Important in the decision is the discussion which observes that the County Ethics Law is solely focused on the financial implications of a conflict of interest and does not attempt to, has no interest in, and was never intended to, address moral or ethical issues of “right” or “wrong”. Passionately expressed points of view on issues while serving in the public interest are not violations of the Ethics Law. In dismissing the complaint, the Commission ultimately determined that the conclusory contentions of the person making the complaint were unsupported by any allegations of fact.

Lobbying Disclosure

In 2010 the Commission registered 19 lobbyists, and received 29 year-end disclosure reports. The Commission continued its efforts to make the public, and individuals who may be functioning as lobbyists, aware of the requirements under the County Ethics Law to register and to file a disclosure form. The Commission mailed numerous letters to individuals and organizations, but received very little response or feedback from its efforts. The Commission will continue its efforts into 2011 since there is evidence that only some of the individuals functioning as lobbyists are in compliance with the statutory requirement to register.

Lobbying disclosure under the Public Ethics Law has two aspects. First, lobbyists are required to file a registration statement within five days of first acting as a lobbyist, and yearly thereafter. Second, any lobbyist who expends funds or receives compensation to influence County government action, or who gives gifts, such as meals and beverages to influence County government action, is required to file a detailed year-end disclosure report of those activities. The registration statement and year-end disclosure report are public records available for inspection and copying.

Conclusion

The Ethics Law continues to be an important part of the machinery of Queen Anne’s County government. The Ethics Commission continues to provide administration of the County Ethics Law in the form of managing financial disclosure forms and lobbyists’ registration and year-end report forms, offering Advisory Opinions when requested, and hearing complaints. Advisory Opinions offer a vital forum for any citizen, whether subject to the Ethics Law or not, to seek a non-binding opinion on any matter where the applicability of the statute is in question. This useful tool was employed many times this year, as it had in previous years, primarily as a means of obtaining advice in order to avoid straying into an area presenting an ethics dilemma.

In 2010 the Maryland Legislature amended the state’s ethics statute to require that all lesser jurisdiction’s Ethics laws must be at least equal to the state statute. Previously the statute utilized wording along the lines of “substantially similar”, to name one, leaving open the possibility that in some instances the lesser jurisdictions’ law might not be as stringent as the state law. The Commission will spend time in 2011 preparing appropriate recommendations to the County Commissioners that may be necessary in order to bring the County law into compliance with the State Ethics Law.

2010 was, once again, a busy year for the Ethics Commission, and we interpret this activity as indicative of an environment where public servants, paid or unpaid, will be held to the highest standards of ethical behavior as they execute the duties of their office. We are pleased to

have been of service to the County in 2010, and look forward to our continued participation in the government of Queen Anne's County in 2011.

Respectfully submitted,

Queen Anne's County Ethics Commission

Kendall Ruffatto, Esquire, Chairman

Robert C. Mueller, Esquire

Reverend Nanese A. Hawthorne

Harold O. Wilson

Benjamin C. Tilghman, Jr.