Agenda Item 9
March 16, 2010
Action

MEMORANDUM

TO: County Council

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Action:** Bill 27-09, Ethics - Amendments

Management and Fiscal Policy Committee recommendation: enact with amendments.

Bill 27-09, Ethics - Amendments, sponsored by the Council President at the request of the Ethics Commission, was introduced on June 16, 2009. A public hearing was held on July 14, at which the only speaker was Ethics Commission Chair Antar Johnson. A Management and Fiscal Policy Committee worksession was held on February 24.

Bill 27-09 would amend the County ethics law to conform to a State Ethics Commission requirement and clarify and update other provisions of the County law. For more details, see the summary of proposed changes to the ethics law prepared by the Commission on ©14-15.

Issues/Committee recommendations

(A) Bill as introduced:

Most of the amendments to the County ethics law that are proposed in this Bill – each of which is summarized on ©14-15 -- are minor administrative and technical changes or clarifications, or logical extensions of current law. For example, the exception from financial disclosure of interests in pension funds would be extended to college savings plans. The substantive amendments that the Committee individually discussed were:

(1) Gifts – meals Bill 27-09 would tighten up the exception for certain meals and beverages in the current law's ban on gifts to public employees from lobbyists and persons regulated by the employee (to coin a term, "regulatees"). See ©5, lines 88-91. The current law allows an employee to accept meals worth up to $50 "per event or a higher amount, not to exceed $100, that the Commission sets". The Commission has never set a higher amount. Bill 27-09 would cap the amount at $50 per year, not per event, from a single source, and repeal the

Commission's authority to raise this amount. The Commission noted that this limit is in line with federal standards. While the $50 ceiling has been in the County law for several decades and $50 obviously does not buy what it used to, Council staff concurs with the Commission that acceptance of meals by employees from those they regulate should be closely restricted. **Committee recommendation:** limit the meal exception to $50/year, rather than per event, from each lobbyist or regulatee.

(2) Gifts – courtesy to office The current ethics law (§19A-16(d)(5)) allows an employee who files a public disclosure statement (primarily elected officials, department heads, and other high-ranking staff members) to accept, from a lobbyist or regulatee, a gift that:

(A) is a courtesy extended to the office; and

(B) consists of tickets or free admission for the employee and one guest to attend a charitable, cultural, civic, labor, trade, sports, or political event, including meals and beverages served at the event;

Bill 27-09 would limit this exception to elected officials. See ©5, lines 93-96. This amendment would conform the County ethics law to the state law, as interpreted by the state Ethics Commission in a 2006 opinion (see ©22-27). After the County received the State Commission's opinion in 2006, then-Chief Administrative Officer Romer issued an order prohibiting anyone in the Executive branch other than the County Executive from accepting "courtesy" tickets (see ©20-21).

The State Commission opinion also emphasized that *the ticket or admission must be given by the sponsor of the event, rather than a third-party such as a lobbyist.* The State Commission interpreted the term "courtesy to the office" as limited to:

> important events such as opening or milestone events. *Common or everyday events that do not benefit from or require the presence of [an elected official] are not appropriate as a courtesy or ceremony to the office. . .* [T]icket acceptance should be limited to events of importance to the sponsor and generally where the sponsor is present or participates as an integral part of the event. *(emphasis added)*

This is a much more restrictive interpretation than has historically been the case, and the State Ethics Commission intends it to apply to County ethics laws as well. Thus a routine ballgame or music performance would not qualify for this exception, but a season opener or special performance could. In Council staff's view, events such as the annual dinner of a civic group should certainly qualify. And, of course, if the gift is not from a lobbyist or regulatee, the prohibition on accepting it does not apply.

At the hearing Councilmember Ervin asked whether the $50/meal cap (discussed in Issue 1) would apply to events hosted by nonprofit organizations, whose tickets often cost more than $50. The $50 cap itself would apply, but the separate "courtesy" exception does not contain a dollar limit as long as the invitation otherwise meets the requirements of the exception.

Because Councilmembers often have more than one invitation at a given time and must assign a staff member to represent them at a major event, Council staff discussed with the County Ethics Commission an amendment to broaden this exception to the elected official's chief of staff. According to County Commission staff, this approach is consistent with the State

Commission's interpretation of the similar state exception. At the worksession, the MFP Committee broadened "chief of staff" to one designee because the chief of staff is not always the staff member assigned to represent the elected official at an event.

Committee recommendation: limit acceptance of "courtesy" event tickets to elected officials and the designee assigned to represent that official.

(3) Lobbyist registration As introduced, Bill 27-09 would clarify that each lobbyist must register annually and pay the registration fee, currently set by regulation, for each client or employer. See ©8, lines 159-160. The current law is not clear that the fee applies separately to each client. The OMB fiscal impact statement did not estimate how much, if any, added revenue this amendment would produce.

After Bill 27-09 was introduced, the Commission proposed a related amendment to clarify how the registration fee is applied. This could be done by inserting on ©8 after line 161:

> (e) The Commission may charge each lobbyist a reasonable annual registration fee <u>for each registration</u> in an amount set by an Executive regulation adopted under method (2). <u>For an organization which registers as a lobbyist, the Commission may charge the organization a fee for each individual lobbyist identified by the organization under subsection (a)(2).</u> The revenue to be raised by the fee must not exceed the cost of administering this Article.

In discussing this provision at its worksession, the Committee concluded that it raised issues of fairness and implementability and warrants further discussion. **Committee recommendation:** delete all amendments affecting lobbyist registration and fees; schedule further Committee discussion with the Commission and affected registrants.

(4) Enforcement Bill 27-09 would allow the Executive branch to enforce the ethics law without filing a complaint with the Commission. See ©8, lines 165-168, 173-174. The summary of changes prepared by Commission staff notes that this amendment "clarifies that the County can proceed with remedies under (the law) without first going through the Commission complaint process". Until now Council staff assumed that the only way to enforce the law is to charge someone with a violation by filing a complaint with the Commission or otherwise persuade the Commission to investigate the matter on its own.

At the worksession, the County Attorney's Office explained that this amendment parallels the current procedure for violations of the County human rights law, where the County can proceed against an alleged violation without requiring a hearing to be held by the Human Rights Commission.

Committee recommendation: allow direct enforcement of the ethics law without a Commission hearing.

(B) Post-introduction amendments:

After Bill 27-09 was introduced, Commission and Council staff jointly prepared several more amendments to deal with issues that arose regarding the ethics law. **The Committee reviewed and recommended the following amendments:**

(5) Financial disclosure – mutual funds Council staff has long believed that requiring financial disclosure statement filers to list the mutual funds in which they own shares serves no purpose. Owners of shares in mutual funds cannot control, and they generally don't even know, which stocks their fund owns at a given time. (If the filer is an officer or director of a mutual fund, that would still be listed separately.)

The requirement to disclose ownership in mutual funds and similar investments would be repealed by adding an exception to the law's definition of "economic interest" on ©2-3, lines 24-27.

(6) Financial disclosure reviews - delegation to division chiefs Bill 27-09 would allow the Chief Administrative Officer to delegate his review of financial disclosure statements to the head of a County agency. The Commission recommended this because the CAO now has to review the statements of more than 150 members of County boards and commissions.

Similarly, some heads of large County departments have many financial disclosure statements to review. This task could reasonably be delegated to the department's division chiefs, who are generally more familiar with each employee and his/her duties and so could more easily spot potential conflicts of interest. This was done on ©7, lines 130-131.

(7) Financial disclosure – enforcement The Commission wanted to clarify its authority to impose a late fee or fine when a filer does not file a financial disclosure statement on time. This was done on ©9-10, lines 199-205.

(8) Other employment – nondisclosure Bill 27-09 would allow the Commission to revoke any waiver it granted if it finds that the employee who applied for the waiver did not disclose a material fact. See ©4, lines 53-56.

A similar provision was inserted for outside employment requests on ©5, lines 75-77.

(9) Gifts - disposition of perishable items Occasionally a County employee or office will receive a perishable item, such as a holiday cake or fruit basket, from donor from whom the employee cannot legally accept the gift because the donor is a lobbyist or regulatee. The current law (§19A-16(f)) requires the recipient to either return the gift to the donor or transfer it to the County. Often, with a time-sensitive perishable item, neither option is practical.

The common-sense solution is to re-gift the item to a charitable or educational organization that can make timely use of it – an option the current law does not expressly allow, but which often is used. The Ethics Commission is comfortable with specifying that option in

the law as long as the employee who re-gifts the item is not connected to the recipient organization. This was done on ©6, lines 101-106.

(10) Remedies and sanctions The Commission wanted to clarify what remedies and sanctions it has the authority to order. Specifically, the Commission wanted the express authority, which may be implied under current law, to impose fines of up to $1000 for violations and to recover property received in a transaction that violated the ethics law. These changes were made on ©4, line 70, and ©9, lines 176 and 183.

(11) Effective dates In Council staff's view, affected employees and the Commission would benefit if most of the amendments in this Bill, particularly the changes in financial disclosure requirements and procedures, were put into effect immediately after this Bill becomes law. **Committee recommendation:** the Bill should take effect on April 1, 2010. See ©10, lines 206-209.

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Bill No. 27-09
Concerning: Ethics – Amendments
Revised: 3-11-10 Draft No. 4
Introduced: June 16, 2009
Expires: December 16, 2010
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the Ethics Commission

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AN ACT to:

(1) amend the County ethics law to conform to a State Ethics Commission requirement; and
(2) clarify and update other provisions of the County ethics law.

By amending
Montgomery County Code
Chapter 19A, Ethics
Sections 19A-4, 19A-8, 19A-10, 19A-12, 19A-16, 19A-17, 19A-18, [[19A-23,]] 19A-27, [[and]] 19A-28, 19A-29, and 19A-32

Boldface	Heading or a defined term.
Underlining	Added to existing law by original bill.
[Single boldface brackets]	Deleted from existing law by original bill.
Double underlining	Added by amendment.
[[Double boldface brackets]]	Deleted from existing law or the bill by amendment.
* * *	Existing law unaffected by bill.

The County Council for Montgomery County, Maryland, approves the following act:

Sec 1. Sections 19A-4, 19A-8,, 19A-10, 19A-12, 19A-16, 19A-17, 19A-18, [[19A-23,]] 19A-27, [[and]] 19A-28, 19A-29, and 19A-32, are amended as follows:

19A-4. Definitions.

* * *

(i) **Immediate family** means spouse and dependent children. A child is a dependent if the child may be claimed as a dependent for federal income tax purposes. For a public employee, immediate family also includes the employee's domestic partner[,] if the partner is receiving County benefits.

(j) **Interest or economic interest** means any source of income or any other legal or equitable economic interest, whether or not the interest is subject to an encumbrance or a condition, which is owned or held[,] in whole or in part, jointly or severally, and directly or indirectly. Interest does not include:

* * *

(4) an interest in a common trust fund or a trust that forms part of a pension plan or profit-sharing plan that:

(A) has more than 25 participants; and

(B) the Internal Revenue Service has determined [qualifies as a] to be a qualified trust or college savings plan under [sections 401 and 501 of] the Internal Revenue Code[[.]]; and

(5) an interest in a mutual fund (including a closed-end fund and a

25 unit investment trust) regulated by the Securities and Exchange
26 Commission, in which the investor does not control the
27 purchase or sale of the individual securities the fund holds.
28 * * *
29 **19A-8. Waivers.**
30 * * *
31 (f) Each waiver request must:
32 (1) be in writing;
33 (2) be signed under oath by the public employee who applies for
34 the waiver;
35 (3) disclose all material facts;
36 (4) show how the employee meets the applicable waiver standard,
37 and
38 (5) include a statement from the public employee's agency head (or
39 the Chief Administrative Officer if the employee is not
40 supervised by an agency head) indicating whether the agency
41 head concurs with the waiver request.
42 [(f)] (g)The Commission must disclose to the public any waiver request that
43 it grants[.] and, on request of any person, must disclose the underlying
44 waiver request and any statement filed under subsection (f)(5) from
45 the employee's agency head or the Chief Administrative Officer. If
46 the Commission denies a request for a waiver [is denied], the
47 Commission may publish its response as an advisory opinion under
48 Section 19A-7(b). But the identity of any public employee who
49 applies for a waiver must be kept confidential until the waiver is

50 granted. The Commission may reveal the identity of any public
51 employee who applies for a waiver that is not granted if:
52 * * *
53 (h) After giving the public employee notice and an opportunity to
54 respond, the Commission may revoke any waiver if it finds that the
55 public employee who applied for the waiver did not disclose a
56 material fact in the waiver request.
57 [(g)] (i) * * *
58 [(h)] (j) * * *
59 **19A-10. Complaint; Adjudicatory Hearing.**
60 * * *
61 (m) If the Commission finds a violation of this Chapter or Sections 2-109,
62 11B-51 or 11B- 52(a), the Commission may:
63 (1) seek injunctive relief under Section 19A-27;
64 (2) proceed under Section 19A-28;
65 (3) seek recovery under Section 19A-29;
66 (4) seek the imposition of disciplinary action by appropriate public
67 employees under Section 19A-30;
68 (5) order the subject of the complaint to stop any violation; **[[and]]**
69 (6) issue a public or private reprimand, and
70 (7) impose a fine which does not exceed $1000.
71 * * *
72 **19A-12. Restrictions on other employment and business ownership.**
73 *(a) General restrictions.*
74 * * *

75 (5) After giving the public employee notice and an opportunity to
76 respond, the Commission may revoke any action approving an
77 employment request if it finds that the public employee did not
78 disclose a material fact in the request.
79 (b) *Specific restrictions.* Unless the Commission grants a waiver under
80 subsection 19A-8(b), a public employee must not:
81 * * *
82 (2) hold any employment relationship that [would] could
83 reasonably be expected to impair the impartiality and
84 independence of judgment of the public employee.
85 * * *
86 **19A-16. Soliciting or accepting gifts.**
87 * * *
88 (d) Subsection (c) does not apply to:
89 (1) meals and beverages [under] which do not exceed $50 [per
90 event or a higher amount, not to exceed $100, that the
91 Commission sets] from the same source in any calendar year;
92 * * *
93 (5) gifts to [a public employee who must file a public financial
94 disclosure statement under subsection 19A-17(a),] an elected
95 official, or that official's designee who is assigned to represent
96 the official at an event included in this paragraph, if the gift:
97 * * *
98 (f) A public employee who receives a gift that the public employee must
99 not accept under this Section must report the gift to the Commission,

100 if otherwise required to report it, and return the gift to the donor or
101 transfer the gift to the County. If the unacceptable gift is a perishable
102 item, the employee, instead of transferring the gift to the County, may
103 transfer it to a charitable or educational organization that can make
104 timely and effective use of the gift, so long as the employee is not an
105 officer, director, trustee, partner, or employee of the receiving
106 organization.

107 **19A-17. Who must file a financial disclosure [statements] statement.**

108 * * *

109 (b) The following persons must file a confidential financial disclosure
110 statement under oath:

111 * * *

112 [(6) any non-merit public employee (except temporary consultants
113 and special legal counsel) paid at a rate above the minimum pay
114 for pay grade 20, as adjusted from time to time under
115 subsection 33-11(b), or the comparable pay grade if the general
116 salary schedule is revised;]

117 [(7)] (6)* * *

118 [(8)] (7)* * *

119 (c) In designating public employees to file public or confidential financial
120 disclosure statements under subsection (a)(4) or (b)[(7)](6), the
121 Executive should include those employees who have substantial
122 responsibility for one or more of the following functions;

123 * * *

124 **19A-18. Financial disclosure statement; procedures.**

125 * * *

126 (e) (1) * * *

127 (D) The Chief Administrative Officer may designate the head
128 of a County agency to review a statement. A director of
129 a County agency or the Chief Administrative Officer may
130 designate the deputy director of the agency or the chief of
131 a division of the agency to review a statement. The
132 designator [[should]] must inform the Commission of the
133 delegation. The designee is subject to the same rules of
134 confidentiality as the designator.

135 (2) After certifying that each part of the statement has been
136 [reviewed] completed and that, on the basis of the information
137 reported, there is no conflict of interest or potential conflict of
138 interest with the filer's official duties, the agency director or
139 Chief Administrative Officer must forward [it] the statement to
140 the Commission within 30 days after receiving it. The agency
141 director or the Chief Administrative Officer may retain a copy
142 of the statement for one year after forwarding it to the
143 Commission. If asked by an agency director, the Chief
144 Administrative Officer, the County Executive, a Council
145 member, or the filer of the statement, the Commission must
146 review any statement within 120 days after receiving it.

147 * * *

148 (f) Each public employee required to file an annual financial disclosure
149 statement under Section 19A-17 must also file a financial disclosure

150 statement:

151 (1) within 15 days after the employee begins employment in a
152 position covered by Section 19A-17, covering the current
153 calendar year up to the date of filing and, unless the employee
154 has already filed a statement for the previous year, the previous
155 calendar year; and

156 * * *

157 **[[19A-23. How and when to register as lobbyist.**

158 * * *

159 (c) A lobbyist must [register separately] file an annual registration form
160 and pay any annual registration fee for each employer.]]

161 * * *

162 **19A-27. [Petition for injunctive] Injunctive or other relief; cease and desist**
163 **orders; voiding official actions.**

164 * * *

165 (d) Except as expressly provided otherwise, any remedy specified in this
166 Article may be invoked regardless of whether the Commission has
167 found, after holding a hearing under Section 19A-10(c), that a public
168 employee violated this Chapter.

169 **19A-28. Penalties.**

170 (a) Unless otherwise indicated, any violation of this Chapter or
171 regulations adopted under it, or any violation of an order of the
172 Commission, is a class A violation.

173 (b) The County Executive may authorize Commission staff or another
174 County employee to issue a citation for any violation.

175 **19A-29. Civil recovery.**

176 (a) The County may recover damages, property, and the value of anything
177 received by any person in a transaction that violates:

178 (1) Article III of this Chapter;

179 (2) Article XII of Chapter 11B; or

180 (3) Section 2-109.

181 (b) The County may use a setoff, attachment, garnishment, or any other
182 appropriate legal action or proceeding to recover any amount or
183 property due.

184 * * *

185 **19A-32. Removal for failure to file financial disclosure statement; fine.**

186 (a) If a public employee does not file a complete financial disclosure
187 statement when required to under Section 19A-18, the Chief
188 Administrative Officer (for employees in the Executive branch) or the
189 County Council staff director (for employees in the legislative branch)
190 may remove the employee from employment with a County agency or
191 from membership on a board, commission or similar body, paid or
192 unpaid. Before an employee is removed for failing to file a financial
193 disclosure statement, the County Attorney must give the employee 30
194 days notice of the proposed removal. The Chief Administrative
195 Officer and the Council staff director must not remove an employee if
196 the employee files the required complete financial disclosure
197 statement within the time specified in the notice. This Section does
198 not apply to an elected public [[employees]] employee.

199 (b) In addition to any action taken under subsection (a), the Commission

200 may impose a fine of $2 per day, up to a maximum of $250, against
201 any person who does not file a complete financial disclosure statement
202 on or before the date it is due. Within 30 days after a fine is imposed
203 under this subsection, the person against whom the fine is assessed
204 may file a written request with the Commission to reduce or waive the
205 fine for good cause.

206 **Sec. 2. Expedited Effective Date.** The Council declares that this Act
207 is necessary for the immediate protection of the public interest. This Act takes
208 effect on April 1, 2010. The amendment to Section 19A-10 made in Section 1 of
209 this Act applies to any complaint filed after this Act takes effect.

210 *Approved:*

211

212

Nancy Floreen, President, County Council Date

213 *Approved:*

214

215

Isiah Leggett, County Executive Date

216 *This is a correct copy of Council action.*

217

218

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 27-09

Ethics -- Amendments

DESCRIPTION:	The requested legislation generally amends Chapter 19A of the Montgomery County Code to accomplish several goals: conform County law to State law; provide delegation options for the CAO in the exercise of his responsibility to review financial disclosure filings; clarify provisions involving definitions, waivers, and financial disclosure; and adjust limits on certain gifts.
PROBLEM:	The County's Ethics Law must be amended to conform with recent amendments to, and interpretations of, the State's similarly worded ethics law. Additional amendments are needed to correct/clarify other provisions of the law.
GOALS AND OBJECTIVES:	By amending the County Code, the Commission believes that changes will provide clearer and stronger guidance to all who must adhere to the standards set by the Ethics Law.
COORDINATION:	Ethics Commission
FISCAL IMPACT:	Office of Management and Budget
ECONOMIC IMPACT:	Office of Management and Budget
EVALUATION:	Subject to the general oversight of the County Executive and the County Council. The Office of the County Attorney will evaluate for form and legality.
EXPERIENCE ELSEWHERE:	Unknown
SOURCE OF INFO:	Barbara McNally, Executive Secretary Ethics Commission
APPL W/IN MUNI:	None
PENALTIES:	As provided in Chapter 19A

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MONTGOMERY COUNTY ETHICS COMMISSION

Antar C. Johnson
Chair

Barbara A. McNally
Executive Secretary

MEMORANDUM

040701

TO: Phil Andrews, President
County Council

FROM: Antar C. Johnson, Chair
Ethics Commission

DATE: February 24, 2009

RE: **Proposed Ethics Law Amendments**

I am transmitting proposed ethics law amendments for Council review and approval. This legislation would amend the County Code to bring the Ethics law into conformance with the State Ethics law; provide delegation options for the CAO in the exercise of his responsibility to review financial disclosure filings; clarify provisions involving definitions, waivers, and financial disclosure; and set new limits on certain gifts.

The Maryland State Ethics Commission recently issued an opinion narrowing an exception that allowed certain public employees to accept an otherwise unacceptable gift from an "interested donor." By amending 19A-16(d)(5), only elected officials will be allowed to accept a gift that is: (1) a courtesy extended to the office; and (2) consists of tickets or free admission to attend certain events. This amendment will bring the County law into conformance with State law as provided in State Ethics Commission Opinion No. 06-01.

A recent amendment to the State ethics law provides that filers do not have to disclose college savings plans on their annual financial disclosure statements An amendment to 19A-4(j), will redefine interest or economic interest to exclude college savings plans.

A proposed amendment to Section 19A-18(e)(1)(D) would provide relief for the CAO in regard to his responsibility for reviewing financial disclosure statements. Over 150 members of boards, commissions, and committees file financial disclosure statements and, under the present ethics law, filers who are not supervised by a director must file a statement with the CAO. A financial disclosure statement filed by a member of a board, commission, or committee is more appropriately reviewed by someone who is familiar with that board and its responsibilities (i.e., the director of the department or agency that staffs that particular board), rather than the CAO.

100 Maryland Avenue, Room 204, Rockville, Maryland 20850
(240) 777-6670 • FAX (240) 777-6672 • barbara.mcnally@montgomerycountymd.gov

Additionally, there several amendments that offer clarification/changes to existing provisions involving financial disclosure, waivers, gifts, remedies, and citations. A list detailing the changes is enclosed, and the legislative request report, are enclosed.

If you have any questions, please do not hesitate to call.

Enclosures

A07-01407
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Proposed Changes To County Ethics Law

(prepared by County Ethics Commission)

County Code §	
19A-4(i)	Addresses question: - does immediate family include a dependent child? Clarifies that a child is dependent if the child could be claimed as a dependent for federal tax purposes.
19A-4(j)	Amended to make consistent with state law (SG § 15-102(t)) regarding college savings plans.
19A-8(f)	Addresses concern that employees may not disclose all relevant facts when seeking a waiver by mandating certain disclosures and including a statement from the employee's agency director.
19A-8(g)	Clarifies that, on request, the Commission can release a waiver request (and the agency director's statement) for any waiver granted.
19A-8(h)	New provision allowing Commission to revoke a waiver, after giving employee an opportunity to respond, if it finds that employee failed to disclose a material fact in waiver request.
19A-12(b)(2)	Clarifies provision that, absent a waiver, an employee must not hold any outside employment that "could reasonably be expected to impair the employee's impartiality and independence of judgment."
19A-16(d)(1)	Sets cap of $50/year on value of meals and beverages that employee can accept from a regulated donor
19A-16(d)(5)	Change to conform to State Ethics Commission Opinion No. 06-01 (Feb. 17, 2006).
19A-17(b)(6)	Eliminates requirement that non-merit employees paid at grade 20 or higher automatically file a confidential financial disclosure statement because it was capturing employees that should not otherwise file (e.g., substitute librarians); County can specifically identify employees who should be captured by Executive regulation or Council resolution (e.g., confidential aides to councilmembers).
19A-17(c)	Clarifies factors Executive can consider when designating position for financial disclosure filing.
19A-18(e)(1)(D)	Authorizes the Chief Administrative Officer to designate a department head to review a financial disclosure statement. The CAO now reviews over 150 statements filed by unsupervised members of boards,

commission, and committees ("BCC's"), in addition to the statements filed by staff in the Offices of the CAO and the Executive. This provision would let the CAO transfer review responsibility for BCC statements to the department heads whose departments actually support those individual BCCs and thus would have the most knowledge about any potential conflict involving a BCC member.

19A-18(e)(2)	No substantive change. Restates reviewer's obligation to ensure that employee has completed the financial disclosure statement and that, based on the information disclosed, there is no conflict of interest or potential conflict of interest with the employee's official duties.
19A-18(f)	Provides that the reporting period for an initial financial disclosure statement is the prior calendar year and the current calendar year up to the date of filing; the current reporting period is only the prior calendar year.
19A-23(c)	Clarifies that a lobbyist must file an annual registration fee and pay any annual registration fee for each client.
19A-27(d)	Clarifies that the County can proceed with remedies under Article VI without first going through the Commission complaint process.
19A-28(b)	Clarifies the Executive's authority to designate employees who can issue citations for ethics violations.

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BILL 27-09

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OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

050247

Joseph F. Beach
Director

MEMORANDUM

July 10, 2009

TO: Phil Andrews, President, County Council

FROM: Joseph F. Beach, Director

SUBJECT: Council Bill 27-09, Ethics - Amendments

The purpose of this memorandum is to transmit a fiscal impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

The legislation does the following:

(1) Brings the County's ethics law into conformance with the State ethics law;
(2) Outlines the process for anyone subject to the ethics law to submit a waiver request to the Ethics Commission and allows the Commission to revoke any waiver that is based on a request that does not disclose all material facts;
(3) Authorizes the Chief Administrative Officer (CAO) to designate department heads to review financial disclosure filings of members of boards, commissions, and committees;
(4) Clarifies the requirement for lobbyists to register with the Ethics Commission and to pay an annual registration fee for each client;
(5) Sets a new cap on the amount for meals and beverages employees can receive from lobbyists; and
(6) Clarifies and updates other provisions of the ethics law.

FISCAL SUMMARY

The proposed legislation does not have a fiscal impact because it does not affect the Ethics Commission's budget nor will it cause additional spending.

Barbara McNally of the Ethics Commission and Phil Weeda of the Office of Management and Budget contributed to and concurred with this analysis.

JFB:pw

c: Barbara McNally, Ethics Commission
Kathleen Boucher, Assistant Chief Administrative Officer
Phil Weeda, Office of Management and Budget

(16)

/

MONTGOMERY COUNTY ETHICS COMMISSION

Antar C. Johnson
Chair

Barbara McNally
Executive Director

July 14, 2009 Testimony on Bill 27-09

Good Afternoon Council President Andrews and Honorable Councilmembers:

I am Antar C. Johnson, Chair of the Ethics Commission. Today, I am here to represent the Commission and its proposed amendments to the Ethics law. There are several amendments included in this bill, for several reasons. I would like to highlight some of the changes for the Council.

One of the proposed amendments brings the County's ethics law into conformity with the State Ethics law. The State Ethics Law allows an elected official to accept an otherwise prohibited gift of free admission to certain events if the gift is a courtesy extended to the office. But the State Commission's model rules erroneously extended that exception to all public employees, not just elected officials. The County, like many other local jurisdictions, follows the State's model rules. In 2006, the Maryland State Ethics Commission issued Opinion 06-01, concluding that its model rule was in error. Shortly after the State Commission

issued its opinion, then CAO Bruce Romer issued a memorandum to all Department Heads directing all executive branch employees to follow this new interpretation issued by the State Ethics Commission. This amendment will codify that interpretation, so that the exception is limited to elected officials.

There is a further proposal in Section 19A-16(d) to decrease the value of meals and beverages that may be accepted by employees from $50 per event to $50 per year from any one source. This is in line with federal standards.

A proposed amendment to Section 19A-18(e) (1) (D) would provide relief for the CAO for reviewing financial disclosure statements. Over 150 members of boards, commissions, and committees file financial disclosure statements and, under the present ethics law, filers who are not supervised by a director must file a statement with the CAO. A financial disclosure statement filed by a member of a board, commission, or committee is more appropriately reviewed by someone who is familiar with that board and its responsibilities (i.e., the director of the department or agency that staffs that particular board), rather than the CAO.

New language provides that waiver requests must include department director comments before acceptance by the Commission and allows the Commission to revoke a waiver if it is later determined that the request was deficient in material fact(s).

This bill offers new definitions, clarifications, and requirements for financial disclosure filers and reviewers; and formalizes the requirement for lobbyists to register annually with the Ethics Commission as well as pay an annual

registration fee for each client.

Lastly, the enforcement amendments clarify that the County can file action in the courts to enforce ethics violations regardless of whether the Commission has conducted its own hearing on the matter.

The Commission appreciates this opportunity to present its amendments and looks forward to working with the Council in upcoming work sessions to improve the Ethics law.

Thank you.

MEMORANDUM

August 28, 2006

TO: Executive Branch Department Directors

FROM: Bruce Romer, Chief Administrative Officer

SUBJECT: Acceptance of Tickets to Events

Based upon a recent opinion issued by the State Ethics Commission, an executive branch employee who files a public financial disclosure statement, other than the County Executive, may no longer accept a gift of tickets or free admission to an event if that gift falls within the prohibition in § 19A-16(c) of the County Ethics Law.

Section 19A-16(c) of the Ethics Law prohibits an employee from accepting a gift from certain "interested persons." For example, an employee cannot accept a gift from a person who does business with, or owns or operates a business that is regulated by, the County agency with which the employee is affiliated.

But § 19A-16(d) sets out several exceptions to the prohibition in § 19A-16(c). One of these exceptions allows an employee who files a public financial disclosure statement to accept a gift of tickets or free admission to an event if the gift is a courtesy extended to the office.

Subsection (c) does not apply to:

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(5) gifts to a public employee who must file a public financial disclosure statement under subsection 19A-17(a), if the gift:

(A) is a courtesy extended to the office; and

(B) consists of tickets or free admission for the employee and one guest to attend a charitable, cultural, civic, labor, trade, sports, or political event, including meals and beverages served at the event;

Last month, the State Ethics Commission issued an opinion construing a similar provision in another county's ethics law. The Commission concluded that the county must limit its exception to elected officials or else the county's ethics law would not meet the requirement that every local ethics law be similar or substantially similar to the state's ethics law.

With regard to the requirement that the gift be a courtesy extended to the office, the State Ethics Commission opined that this requirement:

> . . . should be limited to situations in which the [elected official's] presence helps further the responsibility of the office in recognition of important events such as opening or milestone events. Common or everyday events that do not benefit from or require the presence of [an elected official] are not appropriate as a courtesy or ceremony to the office. . . [T]icket acceptance should be limited to events of importance to the sponsor and generally where the sponsor is present or participates as an integral part of the event.

Prudence dictates that we take heed of the State Ethics Commission's opinion and adopt the same interpretation of our own ethics law. Accordingly, an executive branch employee who files a public financial disclosure statement, other than the County Executive, may no longer accept a gift of tickets or free admission to an event if that gift falls within the prohibition in § 19A-16(c) of the County Ethics Law. I understand that the County Ethics Commission may suggest some corrective legislation as a part of amendments to the ethics law already under their consideration.

cc: Douglas M. Duncan, County Executive
George Leventhal, County Council President
Ethics Commission

EXECUTIVE DEPARTMENT
STATE OF MARYLAND

ROBERT L. EHRLICH, JR.
GOVERNOR

COMMISSION MEMBERS:
JULIAN L. LAPIDES, *Chairman*
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OPINION NO. 06-01

The President of a Board of County Commissioners (hereinafter "President" or "Requestor"), in his capacity as an elected member of the Board, has requested an advisory opinion regarding his County's Ethics Ordinance. He has asked whether the conflict of interest provisions of the County's Ethics Ordinance are similar to the conflict of interest provisions in Subtitle 5 of the Maryland Public Ethics Law, Md. Code Ann., State Gov't Title 15 (Supp. 2005) and whether the County is in compliance with the requirements of Section 15-804. In particular, the President has requested whether the County's ethics ordinance provisions that allow county officials and employees to receive "gifts of tickets or free admission...to attend a professional or intercollegiate sporting event..." as "a courtesy or ceremony extended to the office" are similar to the requirements for State officials and employees. For the reasons set forth below, we advise that the provision is not similar to the State provision in that it allows free admission and tickets to sporting events to be received by county employees and non-elected officials. We further comment, recognizing that we are not the body to interpret the County ethics ordinance, that the free admission and tickets offered to the President to attend a professional sporting event that resulted in his request for this opinion, were not extended, in our view, "as a courtesy or ceremony to the office" and were properly declined by him. We have also determined to use this opinion to discuss our responsibilities to review and approve the substantive provisions of county and municipal government ethics ordinances as required by Subtitle 8, Part I of the Maryland Public Ethics Law. We do this in part because of the recent Court of Appeals decision in *Seipp v. Baltimore City Board of Elections, 377 Md. 362, 833 A. 2d 551, 2003*, and to clarify which post-1979 amendments to the conflict of interest, financial disclosure, and lobbying provisions of the State Law should be imposed on local subdivisions and municipalities pursuant to the requirements of Sections 15-803 and 15-808 of the Law.

I. History and Statutory Requirements

The Maryland Public Ethics Law ("the Law") was enacted in 1979.[1] The Law combined several existing ethics and disclosure programs of State government and created the State Ethics

[1] Chapter 513, Acts of 1979. The law was originally in Article 40A, Sections 1-101 through 7-104. Code revision resulted in the law being transferred to Title 15 of the State Government Article in 1995. See Chapter 533, Acts of 1995.

Commission to administer the programs.[2] The Law required each county, incorporated municipality, and the City of Baltimore to enact provisions similar to the requirements for State officials and employees addressing conflicts of interest and financial disclosure.[3] It required that the local government ethics ordinances also address the regulation of lobbyists.[4] The Law provided that local laws could "be modified to the extent necessary to make the provisions relevant to the prevention of conflicts of interest in that jurisdiction."[5]We were directed to adopt model provisions by regulation for use by local government in complying with the requirements of the law. Specifically the law required the Commission to adopt model provisions "...that related to: (i) conflicts of interest; (ii) financial disclosure; and (iii) regulation of lobbying...."[6]

We adopted our model provisions by regulation, effective September 14, 1981.[7] In addition to adopting two model local ethics laws, we addressed the review criteria and guidelines to determine whether the local ethics ordinance was similar or substantially similar to the State's conflict of interest, financial disclosure, and lobbying provisions. The model law set forth in Appendix A to our regulation ("Model Law A") provided a guide for larger counties and municipalities and very closely followed the State provisions. The model included in Appendix B ("Model Law B") was developed to guide smaller counties and municipalities. In promulgating the regulations, we defined the substantive requirements for conflict of interests, financial disclosure, and lobbying regulation and recognized that some of the State law provisions had specific relevance to State government and not local government. In the context of requiring "similar" conflict of interest provisions, our regulations recognized the need for local governments to modify the "degree" of the conflict of interest, financial disclosure, and lobbying "substantive" requirements. For example, our regulations at COMAR 19A.04.02.04D require that local laws have post-employment provisions. The regulation allows the local government to consider time-limited prohibitions in addition to the "specific matter" restriction in the State conflict of interest provisions. The regulation states that "the precise configuration of post-employment limitations will depend in part upon the size and complexity of the local government."

Pursuant to the regulations, since 1981 we have been engaged in a continuing process of reviewing various county and municipal ethics laws and amendments. We have looked to the

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[2] Prior to 1979 there was a Code of Ethics for Executive Branch Officers and Employees administered by a Board of Ethics created by Executive Order promulgated as COMAR 01.01.1969.07 and amended by COMAR 01.01.1970.14 and 01.01.1978.09. There was also a Financial Disclosure Advisory Board created pursuant to legislation in 1973 (Chapter 3 Acts of 1973 Special Session) ("Financial Disclosure Act" Article 33, Sections 29-1 through 29-11). This Board administered a financial disclosure program requiring annual disclosure of certain assets and sources of income by Legislators and certain elected and employees in the Executive Branch. The 1973 Financial Disclosure Act required each county and Baltimore City to adopt a financial disclosure program. The statute stated "the standards and requirements of which must be substantially those required by this subtitle." (Section 29-10 "Local Authority"). The Secretary of State also administered a "legislative agent" registration and reporting program pursuant to the then Article 40, Sections 5 through 14.

[3] See Sections 15-804 and 15-805 (formerly Article 40A, Sections 6-101 and 6-201). The law allowed us to exempt a municipal corporation from these requirements based on the size of the municipal corporation and provided it was not necessary to preserve the purposes of the Ethics Law. See Section 15-209.

[4] See Section 15-806 (formerly Article 40A, Section 6-301)

[5] See Sections 15-504, 15-805(b) and 15-806 (formerly Article 40A Sections 6-101(b), 6-201(b) and 6-301).

[6] See Section 15-205(b) (formerly Article 40A, Section 2-103(i)).

[7] Code of Maryland Regulations (COMAR) 19A.04.

1979 Maryland Public Ethics Law's conflict of interest, financial disclosure, and lobbying provisions as the "template" for reviewing the local ethics ordinances. We have also looked to any post-1979 amendments to provisions where the General Assembly has expressed its intent that the substance of the amendments be imposed upon local governments. Unless there was a clear statutory intention to impose the requirements on local government, we have not required change to local government ethics ordinances.[8]

As noted by the Court of Appeals in *Seipp*:

> ...The General Assembly clearly desired that local officials and employees be subject to a comparable code, but in lieu of attempting to legislate a single or separate codes of ethics for the wide variety of county and municipal officials, it opted instead to mandate that (1) the local governments enact their own local legislation in those areas, but (2) the local legislation be similar to the State requirements...The State law was to be a template for the local legislation.... 377 Md., 362, 365, 833 A.2d 551,553.[9]

II. Requestor's County's Ethics Ordinance

The Requestor's county adopted an ethics ordinance in 1982, which we approved in 1983. In part the county's ethics ordinance used Model Law B, and it also adopted from State law certain gift exceptions.

III. Issue

The present issue before us arises from a 1999 amendment to the conflict of interest gift exceptions in the State provisions. The amendment removed the exception that allowed State officials to receive gifts of "tickets or free admission...to attend professional or intercollegiate

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[8] For example, in 1991 the General Assembly enacted legislation prohibiting State regulated lobbyists, who lobby the General Assembly, from "soliciting and transmitting" campaign contributions for the benefit of a member or candidate of the General Assembly (Chapter 618, Acts of 1991). The legislation also limited other kinds of campaign finance activities by State regulated lobbyists. The legislation arose out of concerns related to the reported campaign finance activities of certain State lobbyists and we did not impose this requirement on local government. Subsequently in 1994, the General Assembly enacted legislation limiting local lobbyist fundraising in Montgomery and Prince George's Counties (Montgomery and Prince George's Counties Lobbyists Fundraising Restrictions, Chapter 608, Acts of 1994). The General Assembly has also enacted provisions related to local disclosure of campaign contributions in land zoning actions in Prince George's, Montgomery and Howard Counties. See Prince George's County District Council Ethics (Chapter 544, Acts of 1993); Montgomery County Zoning Proceeding (Chapter 645, Acts of 1994); and Howard County Ethics Bill (Chapter 614, Acts of 1995).

[9] The Court in *Seipp* also commented on our determinations of similarity.

> ...Ultimately...similarity is determined by comparing the two laws and making some judgment regarding any variances between them. A departure that is relatively minor or that simply accounts for a local context that is different from the State context does not preclude a finding of similarity.... 377Md.362, 374, 833 A.2d 551, 558.

sporting events."[10] The Requestor advised us that the local professional baseball team offered him free admission to attend a game located in the county. The invitation was to attend a "fun-filled event" and did not appear to be an event where he would be conducting official business on behalf of the county. He was concerned that the offer came some time after the professional baseball organization had approached and sought funds from the Board of County Commissioners to assist in stadium renovation.

IV. Analysis

The Maryland Public Ethics Law as enacted in 1979 adopted a general rule that employees and officials may not receive gifts from persons "doing or seeking to do business," "regulated or controlled," or "a registrant" (lobbyist) with the employee's or official's agency. The Law also prohibited gifts from persons who have financial interests that could be substantially affected by the official or employee in a manner distinguishable from the public generally.[11] The Ethics Law defined eight exceptions to the general rule against acceptance from the donors described above provided the gifts were not of significant value and not given to impair the impartiality and independence of judgment of the official or employee.[12] One of the original exceptions read as follows:

> ...Gifts of tickets or free admission extended to an elected constitutional officer to attend professional or intercollegiate sporting events or charitable, cultural, or political events, if the purpose of such or admission is a courtesy or ceremony extended to the office.... (emphasis added)[13]

The County's ethics ordinance adopted in 1983 included a similar exception provision. It reads:

> ...Gifts of tickets or free admission extended to a county official or employee to attend a professional or intercollegiate sporting event or charitable, cultural, or political event, if the purpose of this gift or admission is a courtesy or ceremony extended to the office....[14]

In 1999, the State Ethics Law was amended, and the gift of tickets or free admission to "professional or intercollegiate sporting events" was removed. Additionally, free admission or tickets for charitable, cultural, or political events could come from only the "sponsor of the event."[15] Section 15-505(c)(2)(viii) now reads as follows:

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[10] The legislation was entitled "Ethics Law- Reform of Legislative Ethics Process." Chapters 129 and 130, Acts of 1999.

[11] See former Article 40A, Section 3-106(a)(1) through (4). This provision is now §15-505(b) of the State Government Article.

[12] See former Article 40A, Section 3-106(b). This provision is now §15-505(c) of the State Government Article.

[13] See former Article 40A, Section 3-106(b)(5).

[14] County Ordinance, Chapter 1.7.1-4(f)(5).

[15] Chapters 129 and 130, Laws of 1999.

- ...tickets or free admission extended to an elected constitutional officer from the person sponsoring or conducting the event, as a courtesy or ceremony to the office, to attend a charitable, cultural, or political event....

The 1999 amendments to the State conflict of interest provisions were the result of the Special Study Commission on the Maryland Public Ethics Law ("Special Study Commission") established by joint resolution during the 1998 General Assembly Session. The 15 member Special Study Commission was directed to "examine the Maryland Public Ethics Law as it relates to the General Assembly and its members, including an examination of the laws relating to...conflict of interest, including employment with the State...."[16] The Special Study Commission conducted ten meetings, received testimony between May and December 1998, and issued a Final Report. The Special Study Commission developed a series of recommendations for changes in the Law as it related to legislators. The Final Report included proposed legislation for the 1999 session.[17]

The Special Study Commission expressed concern about legislators receiving gifts of tickets unrelated to "courtesy or ceremony to the office." The Special Study Commission wrote:

> ...Acceptance of tickets should be limited to those offered by the sponsor of the event. Tickets given by a lobbyist for the purpose of "personal interaction" with the legislator should no longer be exempted from the law's restrictions.... Final Report, p. xi

The Special Study Commission further elaborated in its report as follows:

> ...Acceptance of tickets or free admission extended to an elected constitutional officer as a courtesy or ceremony to the office to attend sporting, charitable, cultural, or political events is amended to be limited to acceptance from the person who is sponsoring or conducting the event. The Study Commission believes that a "courtesy or ceremony to the office" should be limited to situations in which the legislator's presence helps further the responsibility of the office in recognition of important events such as opening or milestone events. Common or everyday events that do not benefit from or require the presence of a member are not appropriate as a courtesy or ceremony to the office. This change is intended to clarify that ticket acceptance should be limited to events of importance to the sponsor and generally where the sponsor is present or participates as an integral part of the event.... Final Report, p.22

Our further review of the legislation proposed by the Special Study Commission in 1999 and actions by the General Assembly during that session suggests that the subsequent Senate amendment to remove "intercollegiate and professional sporting events" from the free admission and ticket gift exception was directed at members of the General Assembly. There is no evidence

[16] See HJR4and SJR4 1998 Session.
[17] Report of the Special Study Commission on the Maryland Public Ethics Laws, Annapolis, Maryland. December 1998.

that the General Assembly intended this change in the law to apply to local government ethics laws.[18]

We therefore conclude that the local government ethics ordinance may allow gifts of tickets to "intercollegiate and professional sporting events," provided they are to elected officials. The gift of tickets or free admission must be "as a courtesy or ceremony to the elected office."[19] In reviewing our regulations we note that our Model Law A erroneously extends the gift of tickets provision to local government employees as well as elected officials. Clearly this was not intended by the General Assembly when it limited gifts of tickets to "constitutionally elected officials."[20]

Accordingly, we advise the Requester that the County provision allowing gifts of free admission or tickets to intercollegiate and professional sporting events is not similar to the requirement of State law in that it allows such gifts to employees as well as elected officials. We have directed our staff to correct Model Law A to remove employees from the exception. We further advise the Requestor that his decision not to accept the gift of free admission to the professional sporting event was appropriate in that the invitation was not part of a courtesy or ceremony to the office.[21]

Date: January 19, 2006

Julian L. Lapides, Chair
Dorothy R. Fait*
Daryl D. Jones
Janet E. McHugh
Robert F. Scholz

* Ms. Fait was a member of the Commission when this opinion was considered but resigned prior to the issuance of the opinion.

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[18] The Senate amendment specifically addressed gifts of sporting tickets to members of the General Assembly.

[19] This requirement has been in the Ethics Law since 1979. We believe that the definition of "courtesy or ceremony to the office" adopted by the Special Study Commission is a satisfactory and sufficient standard.

[20] See §15-505(c)(2)(viii).

[21] As part of our review, we have noted one other substantive change since 1979 affecting the conflict of interest provisions that was intended to apply to local government ethics laws. In 1994, the General Assembly removed the word "minor" as a modifier to child in §15-501 non-participation requirements. This change was the result of our departmental legislation and intended to clarify that recusal was necessary when any child of an employee had an interest in the matter. There is no basis in ethics logic to distinguish between an "adult" child and a "minor" child of the employee or official. We have directed our staff to review our local government regulations for the purpose of assuring the model laws eliminate any ambiguity in this regard. Chapter 18, Acts of 1994. See §15-102(gg). We have also directed our staff to review our similar regulations and models for the county Boards of Education in adopting ethics regulations to insure that they conform to our discussion in this opinion. Our review of the subsequent amendments to the 1979 Public Ethics Law in the area of financial disclosure and lobbying did not indicate that the General Assembly mandated that the modification be imposed on local government ethics ordinances.