

[Advisory Opinion 1996-13]

August 2, 1996

TO: [Name1 withheld]
Community Recreation Division
FROM: Laurie Horvitz, Chair [initialed]
Montgomery County Ethics Commission
RE: Advisory Opinion

You have requested advice concerning the use of a Community Recreation Center by a private organization that was not paying the normal rental fees. Specifically, a private organization used the facility to teach martial arts for many years without paying rent. Instead, the organization made donations to the County facility. This practice was discontinued in March of 1995. You expressed concern about this practice because the responsible staff person was a student with the private organization and because other organizations were required to pay rent. Furthermore, this staff person may have used his position with the department and his relationship with his co-workers in order to provide this unique arrangement to the private organization. In addition, the staff person apparently arranged for the donations to be paid directly to vendors who were providing equipment to the facility. You already have investigated the matter and imposed penalties upon the staff person pursuant to the County Code and the Department of Recreation's policies and procedures. You wish to determine whether any further actions are required by the Ethics Law.

The Montgomery County Ethics Law permits an investigation by the Ethics Commission of conduct occurring within the previous two years. See 19A-9(a) of the Montgomery County Code. Therefore, it is unclear whether the Commission could investigate conduct occurring before the summer of 1994. The remedies available to the Commission upon finding that a violation of the Ethics Code has occurred are set forth in the County Code. The Commission may issue a public or private reprimand, issue a cease and desist order, and recommend appropriate disciplinary action. In addition, the County may seek to recover the value received by the individual and may seek the issuance of a civil citation imposing a fine. See 19A-10(m).

Based upon the information provided, an investigation by the Commission does not appear necessary to resolve this matter. Evidently, the questionable conduct has ceased and disciplinary action has already been taken. Furthermore, it is not clear that the individual received personal financial benefit that could be recovered. You have not alleged a clear personal or private gain by the individual or the organization. Since an investigation does not appear necessary to resolve the matter, the Commission is not prepared to initiate an investigation without a formal complaint. See Article 19A-9(a). A formal complaint with additional details, such as the name of the individual and the benefit conferred on the organization, would be needed for the Commission to consider initiation of an investigation.

At this juncture, your options include preparing a formal complaint to be filed with the Ethics Commission pursuant to §19A-10 of the Montgomery County Code. In the alternative, you may consult with your supervisor and, perhaps, the Chief Administrative Officer, to determine whether it is appropriate to approach the State's Attorney with concerns about possible criminal conduct. If you believe that the matter has been adequately addressed by the actions you have already taken, then you are not under any further obligation to pursue the issue.

Thank you very much for your sensitivity to these ethics issues. Should you have any questions concerning this advice, please do not hesitate to contact the Commission.

cc: Barbara McNally, Executive Secretary
Montgomery County Ethics Commission