Advisory Opinion 2002-11 (02-011; Honoraria; December 20, 2002)

MONTGOMERY COUNTY ETHICS COMMISSION

ADVISORY OPINION

The Montgomery County Public Ethics Law permits any person who is subject to that law (or certain other County ethics provisions) to ask the Ethics Commission for an advisory opinion on the meaning or application of the Ethics Law (or those other provisions) to that person.[1]

The Director of the Legal & Labor Relations Division of the Montgomery County Police Department has asked the Commission for an advisory opinion on several questions that have arisen in the aftermath of the Department's spearheading of a recent multi-jurisdictional investigation into a series of internationally publicized sniper shootings in Maryland, Virginia, and the District of Columbia.

QUESTIONS PRESENTED

1. May a command officer accept an honorarium for giving a speech or participating as a panel member at a law enforcement seminar or event about the sniper shootings investigation?

2. May a command officer who accepts such an honorarium also receive reimbursement for travel, meals, and miscellaneous expenses?

3. Is there a limit on the amount of a permissible honorarium or the number of honoraria an officer may receive?

PERTINENT FACTS

[1] *See* MONT. CO. CODE §19A-7(a). Unless the requester authorizes disclosure, the Commission must keep the name of the requester confidential. *Id.* Nevertheless, the Commission must: (a) publish each opinion when it is issued unless the Commission finds that the privacy interest of a public employee or other person clearly and substantially outweighs the public's needs to be informed about Commission actions; (b) at least annually must publish a list of all unpublished opinions, with the reason why each opinion was not published; and (c) take all reasonable steps consistent with making the opinion useful for public guidance to keep confidential the identity of any person who is affected by the opinion request. §19A-7(b).

The requester provided the following pertinent facts:

As you are aware, our department spearheaded the recent sniper shootings investigation force. Because of the unprecedented nature of the investigation, inter-agency cooperation, and the logistic magnitude of the operation, several command officers have begun to receive requests to speak at various law enforcement seminars and events. These requests are being made by both "for profit" and "not for profit" organizations. The organizations have offered to pay for travel expenses, hotel, meals, and have even offered honorariums for their assistance.

* * *

These questions are important for a number of reasons. I anticipate that the offers will continue for quite some time. This incident was a first for not only Montgomery County, but the entire country. It generated an extraordinary amount of media coverage throughout the world. Our Media Services Section received interview requests from as far away as Australia and Japan. The event was front page news in South America and Spain. It was covered by every major media outlet in this country. The department issued a total of 1,300 passes for the press conferences held at police headquarters . . . .

[I]t is important that the department receive some guidance from the Ethics Commission so that other agencies may learn from our experiences, while staying within the county's ethical guidelines . . . .

APPLICABLE LAW

The questions presented implicate § 19A-14 of the Montgomery County Public Ethics Law, concerning the use of the prestige of one's public office. They also may implicate § 19A-15, concerning confidential information. These provisions provide, in pertinent part, as follows:

Sec. 19A-14. ***Misuse of prestige of office*** **. . . .**

(a) A public employee must not intentionally use the prestige of office for private gain or the gain of another . . .

Sec. 19A-15. ***Disclosure of confidential information.***

(a) Except when authorized by law, a public employee or former public employee must not disclose confidential information relating to or maintained by a County agency that is not available to the public.

ANALYSIS

Because this request presents significant questions of statutory construction which this Commission has not previously had occasion to address, we have sought and received legal advice from the Office of the County Attorney on the following questions:

1. Does the Montgomery County Public Ethics Law prohibit a public employee from accepting an honorarium or fee for speaking at a meeting or participating in a panel regarding a matter related to the employee's governmental activities?

2. Does the Montgomery County Public Ethics Law permit a county employee to accept reimbursement for expenses given in return for the public employee's participation in a panel or speaking at a meeting regarding a matter related to the employee's governmental activities?

After carefully considering the language and history of §§ 19A-14, the State Ethics law provisions which those sections are required to reflect, and the pertinent advisory opinions of the State Ethics Commission and its predecessor, the former State Board of Ethics, the County Attorney's Office has advised that the County Ethics law does not permit a public employee to accept an honorarium or fee for speaking at a meeting or participating in a panel regarding a matter related to the employee's governmental activities. However, a public employee may accept reimbursement for reasonable expenses for food, travel, lodging, and scheduled entertainment in return for participation in a panel or speaking at a meeting, even when the subject is related to the employee's governmental activities.

ADVICE

Applying the applicable law to the pertinent facts as presented by the requester, the Commission, based on the legal advice and analysis set forth in the attached Opinion of the County Attorney, advises as follows.

1. The County Ethics law prohibits a public employee from using the prestige of his or her office for personal gain. Giving a presentation or participating as a panelist, for a fee or honorarium, in the discussion of a subject that is directly and immediately related to one's governmental activities constitutes the use of the prestige of one's office, and, therefore, is prohibited. A public employee may not accept such a fee-for-service honorarium.

2. In addition— whether related to the performance of a public employee's duties or not, and whether for an honorarium or fee or not—a public employee may not disclose confidential information relating to or maintained by a County agency that is not available to the public.

3. The County Ethics law does not prohibit a public employee from accepting reimbursement for reasonable expenses for food, travel, lodging, and scheduled entertainment of the public employee, given in return for the public employee's participation in a panel or speaking at a meeting concerning a subject that is directly related to the employee's public duties. Public employees may accept reasonable-expense reimbursement under such circumstances.

In summary, the Montgomery County Ethics law permits a public employee to give a speech or participate as a panel member at a law enforcement seminar or event about the sniper shootings investigation, and accept, in return, reimbursement for reasonable expenses for his or her food, travel, lodging, and scheduled entertainment.

Absent a waiver, however, the Ethics law does not permit a public employee to disclose confidential information, or accept an honorarium for such services.

FOR THE COMMISSION:

[signed]
Elizabeth K. Kellar, Chair

December 20, 2002