



MONTGOMERY COUNTY ETHICS COMMISSION

Nina Weisbroth
Chair

Stuart D. Rick
Vice Chair

October 13, 2011

Media Services Division
Montgomery County Police
2350 Research Boulevard
Rockville, MD 20850

RE: Advisory Opinion 11-10-005

You have requested an opinion from the Montgomery County Ethics Commission whether certain charitable activities could be conducted in manner that is consistent with the Public Ethics Law.

You have stated that Joe's Crab Shack (Joe's) will sponsor a "Tip-A-Cop" event where local law enforcement officers will act as servers and tips to these servers will be donations to Special Olympics Maryland (SOMD). This is a corporate-wide and multi-state event that Joe's sponsors each year. A portion of the day's proceeds of the food sales will also be donated to SOMD. The officers' participation in the activity will be uncompensated.

Montgomery County Police Officers who will be participating in this activity will be off-duty and not in uniform. In other words, they will be on their own time. Furthermore, neither you nor Joe's nor any of the participants nor SOMD nor anyone else associated with the event will make reference to the Montgomery County Police participation in the event. Instead, all references in promotional material, advertisements, or other oral or written communications about the event will be to "Tip-A-Cop" and the participation of "local law enforcement" without reference to Montgomery County. You have indicated that you will notify participating Montgomery County Police officers of their respective obligations and be present coordinating the day's events ensuring that the participating officers will be abiding by all applicable restrictions, including those incorporated in the Collective Bargaining Agreement governing the use of Personal Patrol Vehicles and the use and dispensing of alcohol. Because this will be an unofficial and private activity, communications within the Department about the event will be limited to private communications and those portions of bulletin boards or electronic web-boards used exclusively to advertise private activities.

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The County's Public Ethics Law includes prohibitions on the solicitation of gifts by County employees and on the misuse of the prestige of office by County employees.

Pursuant to Section 19A-16(a), County employees are prohibited from soliciting gifts under certain circumstances. But, pursuant to Section 19A-16(b)(2), "a public employee may solicit a gift . . . from any person to a charitable organization . . . if the public employee does not solicit gifts primarily from those persons who do business with or are regulated by the county agency with which the public employee is affiliated . . . or from other employees who are supervised directly or indirectly by the public employee." As police officers will be involved in serving persons at a restaurant and the tips and certain of the proceeds will be given to charity, we believe that this is properly viewed as a solicitation of gifts for a charity. But the patrons of the restaurant involved will be members of the general public and not "primarily . . . persons who do business with or are regulated by" the Police Department. While many members of the public rely on the Police Department for safety, protection, traffic control and other assistance, and have interaction with the Police Department, the general public as a whole cannot be properly viewed as being made up primarily of persons "who do business with or are regulated by" the Police Department. Therefore, the solicitation prohibition of Section 19A-16(a) does not apply under the facts you have presented.

The second issue under the Public Ethics Law is whether involvement by police officers in the solicitation activity at the restaurant is a misuse of the prestige of office and prohibited by Section 19A-14(a). That provision provides that a "public employee must not intentionally use the prestige of office for private gain or the gain of another."

The facts you have presented make clear that the County police officers that will participate in the activity will not appear as Montgomery County Police Officers but as "local law enforcement" along with other law enforcement from local jurisdictions. They will be engaged in a private activity, off duty, not in uniform, and with no reference to their titles or status as Montgomery County Police Officers. While there may be some incidental private gain to the restaurant, the primary focus of the activity is the charitable fundraising for the Special Olympics. In the view of the Ethics Commission, employees would not misuse the prestige of office by participating in the event you have described and in the manner you have described.

In sum, the charitable activities you have described are not prohibited by the Public Ethics Law. Of course, this advisory opinion is limited to the circumstances you have presented here. Any change in the facts could result in a different opinion from the Commission.

Sincerely,



Nina Weisbroth, Chair

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