

[Advisory Opinion 1997-15]

Montgomery County Ethics Commission

Advisory Opinion

October 14, 1997

The Co-Chairs of the Ethics Committee of the Department of Health and Human Services have sought an advisory opinion of the Commission concerning the application of Chapter 19A of the Montgomery County Code (the “County Ethics Law”) to a county employee’s acceptance of an unsolicited gift from a patient or client of the employee’s agency. In particular, the Committee has asked whether the County Ethics Law prohibits professionals, such as nurses and caseworkers employed by the Department of Health and Human Services, from accepting an unsolicited gift from a patient or client of the Department.

ADVICE

For the following reasons, the Commission is of the opinion that, with certain exceptions, the County Public Ethics Law prohibits the acceptance of such gifts.¹ In particular, the Commission advises:

1. §19A-16(c) of the County Public Ethics Law prohibits every county employee, including professionals such as nurses and caseworkers, from accepting any gift, other than a gift permitted by §19A-16(d),² from any individual or organization that the employee knows or reasonably should know does business with the County agency with which the employee is affiliated, including a patient or client of that agency.³
2. A nurse or caseworker who receives a gift prohibited by §19A-16(c) is required by §19A-16(f) to report the gift to the Commission and either return the gift to the donor or transfer the gift to the County.

DISCUSSION

The Montgomery Public Ethics Law is grounded, in pertinent part, on the following legislative findings and statements of policy:

- (a) Our system of representative government depends in part on the people maintaining the highest trust in their public officials and employees. The people have a right to public officials and employees who are impartial and use independent judgment.

¹ The Commission expresses no view on the question of whether the acceptance of such a gift is prohibited under any other authority, *e.g.*, a code of ethics for a particular profession, a licensing law or regulation, or a federal or state program law or regulation.

² Fn. 5 lists the gifts permitted by §19A-16(d) (the “exempted gifts”).

³ In addition, §19A-16(c)(4) prohibits every county employee, including nurses and caseworkers, from accepting a gift if the employee is able to affect the economic interest of the donor. Thus, even if (c)(2) did not apply, (c)(4) would prohibit a nurse or caseworker from accepting a non-exempted gift from a client or patient if the nurse or caseworker were able to affect the patient or client’s interest in receiving or continuing to receive services from the Department.

- (b) The confidence and trust of the public erodes when the conduct of County business is subject to improper influence or even the appearance of improper influence.

Montgomery County Code, §19A-2. This County Ethics Law also was enacted “to guard against improper influence.” §19A-2(c), and, except for its criminal sanction provisions, is intended to “be liberally construed to accomplish this purpose,” §19A-2(d).

In furtherance of these findings and policies and in response to a state law mandate, the County Public Ethics Law specifically addresses the acceptance of an unsolicited gift⁴ by a public employee⁵ In pertinent part, §19A-16(c) provides:

A public employee must not knowingly accept a direct or indirect gift from any individual or organization that the public employee knows or reasonably should know:

* * *

- (2) does business with the County agency with which the public employee is affiliated;

* * *

or

- (4) has an identifiable economic interest that is different from that of the general public, which the public employee may substantially affect in performing the public employee’s official duties.⁶

§19A-16(f) requires that a public employee who receives a gift prohibited by §19A-16(c) report the gift to the Commission and either return the gift to the donor or transfer the gift to the County.

Montgomery County enacted §19A-16(c) in obedience to a provision of the State Public Ethics Law which requires that each county enact conflict of interest provisions similar to those of the State Ethics Law. *See*, Md. Code, State Gov. Art., §15-804; Co. Code, §19A-2(d). Thus, state law provides the model for the county provisions and the two are to be read *in pari materia*.

⁴ “*Gift* means the transfer of anything of economic value, regardless of form, without an exchange of consideration of at least equal value.” §19A-4(h).

⁵ *Public employee* means, in pertinent part, “any person employed by a County agency . . .” §19A-4(m).

⁶ §19A-16(d) contains numerous exceptions to subsection (c)’s general prohibition. In pertinent part, subsection (d) excepts meals and beverages under \$50 per event or a higher amount, not to exceed \$100, that the Commission sets; items of personal property, other than personal property, worth less than \$10; gifts to a public employee who must file a public financial disclosure statement under subsection 19A-17(a), if the gift is a courtesy extended to the office and 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; any item that is solely informational or of an advertising nature, including a book, report, periodical, or pamphlet, if the resale value of the item is \$25 or less; a gift to the employee or a member of the employee’s immediate family if the value of the gift is less than \$150 and the gift is given for a wedding, graduation, birth of a child, or similar non-recurring personal milestone; gifts from a relative; and a specific gift or class of gifts which the Commission exempts from §19A-6 after finding in writing that accepting the gift or class of gifts is not detrimental to the impartial conduct of the business of a County agency.

In 1982, the State Ethics Commission, which is uniquely qualified to construe the State Ethics Law,⁷ addressed, in a published opinion, the question of whether that law prohibited a community home care aide in a local department of social services from accepting a bequest from the estate of a former client.⁸ Based on the State Ethics Law's admonition that it be liberally construed,⁹ the State Ethics Commission concluded that an agency client is a person doing business with the agency, and consequently agency personnel could neither solicit a gift nor accept an unsolicited gift from an agency client. *Md. State Ethics Commission Opinion No. 82-54*, XVII COMAR 535, 536 (December 15, 1982).¹⁰

The longstanding formal construction of a law by the agency charged with its administration is entitled to weight. *Md. Com'n. On Human Relations v. Baltimore Gas & Electric Co.*, 296 Md. 46 (1923). Indeed, when acquiesced in by the Legislature, the formal construction of a law by the agency charged with its enforcement is entitled to great weight and should not be disregarded except for the strongest reasons. *Public Service Comm. of Md. v. Howard Research & Dev. Corp.*, 271 Md. 141 (1974). Thus, given the State Ethics Commission's extraordinary authority to interpret the State Ethics Law and the approximately fifteen year period in which the Legislature has acquiesced in the construction of state law as prohibiting state employees from accepting a gift from their state agency client, *Opinion 82-53* is entitled to great weight when construing the State Ethics Law. Furthermore, given the direct relationship between the similar conflict of interest provisions of the State Ethics Law and those of the County Ethics Law, *Opinion 82-54* is also especially persuasive as to the meaning of the similar, state-mandated, gift prohibition provision of the Montgomery County Public Ethics Law.

Thus, in the light of both the state model, as construed by the State Ethics Commission, and the County Ethics Law's express admonition that it be liberally construed "to guard against improper influence," this Commission concludes that §19A-16(c)(2) prohibits professionals, including nurses and social workers employed by a county agency, from accepting a gift from their patient or client, unless the gift is permitted by §19A-16(d).¹¹

⁷ The State Ethics Law empowers the State Ethics Commission to administer that law, to publish and make available to persons subject to that law and to the public information that explains the law, to adopt by regulation model provisions for local governments that relate to conflicts of interest, to issue advisory opinions regarding the application of that law, and to entertain, hear and dispose of complaints of violations of that law. *See*, Md. Code, State Gov. Art., §§15-104(3); 15-205(a)(1), (a)(6), and (b)(1)(i); 15-310; and 15-401–405.

⁸ Unlike the employees of the Montgomery County Department of Health and Human Resources, the employees of many other local departments of social services are state employees. *See*, 67 *Op. Atty. Gen.* 356, 360–64 (1982).

⁹ Md. Code, State Gov. Art. §15-102(d).

¹⁰ The State Ethics Commission also looked at then Article 40A, §3-104, of the State Code, which, like §19A-14(a) of the County Code, prohibits a public employee from intentionally using the prestige of his or her office for private gain or the gain of another and found, in the case before it, that there was "no indication that the Aide took any intentional action to influence the client's will in her favor, and her provision of [certain services to that client was] consistent with specific duties set forth in her official job description."

¹¹ The County Public Ethics Law also prohibits a county employee from accepting a gift from one who has an identifiable economic interest that is different from that of the general public and which the public employee may substantially affect in performing his or her official duties. *See*, §19A-16(c)(4).

[signed]

Laurie Horvitz, Chair
Montgomery County Ethics Commission