

Advisory Opinion 1999-4

December 20, 1999

1 This is a contract between Montgomery County, Maryland, and the under which the latter operates the , the County's previous undated memorandum to the Ethics Commission's Executive Secretary regarding the employment of a former County Employee by the

Dear :

By your letter of October 8, 1999, the sought "assurance from the Ethics Commission that activities for which [the is] funded by the County do not constitute lobbying." Your letter was prompted by an August 25, 1999, letter to the from CPS, the Department of Health and Human Services' monitor for its contract with the for the operation of the In pertinent part, wrote:

[I]t appears that the contract with the Department continues to provide nearly all the organization's funding. One effect of this is that funds appear to be supporting lobbying activities above and beyond the intent of the contract.

In recognition of this history and current situation, I am relaying the Department's intent that the should rely on outside support and funding for its advocacy efforts and devote County funds to expanding the operation of the as an information, referral, outreach and education service. In addition, staff whose salaries are paid from County contract funds may provide information and support services, but advocacy and possible lobbying activities are more appropriately performed by board members and other community volunteers.

After discussing future contracting, letter made two requests for this fiscal year:

1. Assurance from the Ethics Commission and the board that activities funded by the County do not constitute lobbying.
2. A workplan showing how the terms of the contract are being met and what percent of staff time is devoted to the particular contract requirements. The workplan must relate to the County's stated outcomes and must be approved by [. . . .] as contract monitor, by October 15.

Reflecting concerns, your letter to this Commission states that the "confine[s] its] activity to the work as described in the Scope of Service and [its] current workplan," both of which you enclosed for review by the Ethics Commission.

Treating your letter, as we must, as a request for an advisory opinion, the Commission advises that, for the purposes of the Montgomery County Public Ethics Law, lobbying is "any attempt to influence any legislative, executive, or administrative action by a County agency." Whether an activity described in the scope of service and work plan you have submitted would

constitute lobbying, however, is not readily apparent given the generality of those provisions. Such a determination requires more specifics than these documents contain. The Commission, therefore, is unable to advise whether any of these general activities would constitute lobbying.

In any event, lobbying under that contract or in the performance of any other activity for which the is funded by the County would not be prohibited by the Ethics Law, although it would be subject to that law, unless excepted or exempted. The lobbying provisions of the Ethics Law are merely disclosure provisions that apply, with certain exceptions and exemptions, to all persons, whether or not they are funded by or acting under a contract with the County. Those provisions require an individual or organization to register as a lobbyist and to file certain reports if, during a year, the individual or organization:

- (1) communicates with a public employee to influence legislative action by a County agency, and for that purpose either.
 - (A) spends more than \$500, or
 - (B) receives compensation, including a pro-rated part of a salary or fee for services, totaling more than \$500; or
- (2) communicates with a public employee to influence executive or administrative action by a County agency, and for that purpose spends a total of more than \$500 for;
 - (A) meals and beverage
 - (B) transportation;
 - (C) lodging;
 - (D) provision of any service;
 - (E) one or more special events; and
 - (F) one or more gifts.

These Ethics Law lobbying registration provisions, however, do not apply to:

- (1) drafting bills or advising clients about proposed or pending legislation without any other attempt to influence the legislative process;
- (2) communicate with a County agency when requested by the agency, without engaging in any other activity to influence legislative, administrative, or executive action on the subject of the communication;

- (3) communicating with a County agency as an official act of an official or employee of the state, a political subdivision of the state, or the United States, and not on behalf of any other person or business;
- (4) actions of a publisher or working journalist in the ordinary course of disseminating news or making editorial comment to the general public, without engaging in other lobbying that would directly and specifically benefit the economic interests of a specific person or business;
- (5) appearing before a County agency at the request of a lobbyist if the witness:
 - (A) takes no other action to influence legislative, administrative, or executive action; and
 - (B) identifies himself or herself as testifying at the request of the lobbyist;
- (6) communicating on behalf of a religious organization for the sole purpose of protecting the right of its members to practice the doctrine of the organization;
- (7) communicating as an official duty of an officer, director, member, or employee of an organization engaged exclusively in lobbying for counties or municipalities, and not on behalf of any other person or business;
- (8) acts regulated under Chapter 8 [of the County Code], Cable Communications; and
- (9) an action of any person representing an organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code if:
 - (A) the action promotes the exempt purposes of the organization; and
 - (B) the organization gave gifts totaling less than \$500 to public employees in a year; and
 - (C) the representative is paid or spends less than \$1,000 in a year to influence executive, administrative, and legislative action.

Furthermore, except for the filing of an authorization to lobby, an individual or organization is exempt from the reporting requirements of the Ethics Law if the individual or organization:

- (1) compensates one or more lobbyists;
- (2) reasonably believes that each lobbyist will timely register and report all expenditures required to be reported; and
- (3) engages in no other lobbying.

In summary, whether an activity described in the scope of service and work plan you have submitted would constitute lobbying is not readily apparent given the generality of those provisions. Such a determination requires more specifics than these documents contain. The Commission, therefore, is unable to advise whether any of these general activities would constitute lobbying. In any event, however, lobbying under the contract or in the performance of any other activity funded by the County would not be prohibited by the Ethics Law, although it would be subject to that law and would require that the or any person lobbying on behalf of the register as a lobbyist and file the requisite reports, unless excepted or exempted from those requirements by the Ethics Law. Other laws or policies, however, or the contract itself may prohibit the from lobbying under the contract or in the performance of any other activity funded by the County.

If you have any question about whether specific conduct would constitute lobbying for the purposes of the Ethics Law, the Commission will be happy to address it.

Very truly yours,

[signed]

Kenneth C. Jackson, Sr., Chair