



ST. MARY'S COUNTY GOVERNMENT

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ST. MARY'S COUNTY ETHICS COMMISSION ADVISORY OPINION 2005-02 MAY 16, 2005

An official of the St. Mary's County Public Schools requests an advisory opinion regarding whether a lease agreement dated September 7, 2002, between the Associate Superintendent of Schools (hereinafter "Lessor") and the Chair of the St. Mary's County Board of Education (hereinafter "Lessee") creates a conflict of interest for the latter. The lease agreement is for a horse owned by Lessor to be used for riding lessons for a child of Lessee. The agreement has been in effect since September 7, 2002. With the recent retirement of the Superintendent of Schools, Lessor has become the Acting Superintendent of Schools and a candidate for the position of Superintendent. The Superintendent is elected by the St. Mary's County Board of Education (hereinafter "Board of Education") and serves at the pleasure of that Board.

FACTS

Under the aforementioned lease agreement, consideration is paid by the Lessee in the amount of \$1.00 for the first year, with an extension of indeterminate length thereafter subject to the agreement of both parties. The Lessee has the right to terminate the agreement apparently for any reason with 30 days notice. Lessor is responsible for delivery and pickup of the horse; the Lessee is responsible for the costs of feeding, boarding and caring for the horse. The Lessee has further testified before the Ethics Commission that the costs she has assumed equal a fair-market value of a lease of this type.

With the pendency of this request for an opinion, the Lessee has testified before the Ethics Commission that she has recused herself from any interview of the Lessor, and deliberations regarding the application of the Lessor for the position of Superintendent of Schools.

RELEVANT LAW

The following definitions from Section 3 the St. Mary's County Ethics Ordinance of May 29, 2001, (hereinafter "Ordinance"), are relevant to consideration of the matter:

"Interest" means any legal or equitable monetary interest, whether or not subject to an encumbrance or a condition, which is owned or held, in whole or in part, jointly or severally, directly or indirectly.

"Official and/or employee" means any person elected to, appointed to or employed by St. Mary's County or any St. Mary's County agency, board, commission or similar entity, whether or not paid in whole or in part with St. Mary's County funds, and whether or not compensated.

"Financial interest" means ownership of any interest as the result of which a person has received, within the past calendar year, or is presently receiving, or in the future is entitled to receive more than \$1,000 per calendar year, or ownership of, or interest in more than five percent (5%) of a business entity.

"Gift" means the transfer of anything of economic value, regardless of the form, without adequate and lawful consideration.

Section 5. A. of the Ordinance addresses participation restriction:

Participation prohibitions. Except as permitted by other provisions of this Ordinance or by Commission regulation or opinion, a St. Mary's County official or employee shall not participate in:

1. Any matter, except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to that matter, if, to his/her knowledge, he/she, his/her spouse, child, parent, brother or sister has an interest therein.

Section 5. C. of the Ordinance addresses outside employment restrictions:

Outside employment restrictions. Except as permitted by other provisions of this Ordinance or by ruling or regulation of the Commission when such interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, a St. Mary's County official or employee may not:

2. Hold any employment relationship or have a financial interest which would impair the impartiality or independence of judgment of the official or employee.

Section 5. C. of the Ordinance also addresses exceptions to the prohibition regarding outside employment restrictions:

3. The prohibitions in paragraphs 1. and 2. do not apply to:
 - c. Subject to other provisions of law, including Section 5 of this Ordinance, any member of a board or commission in regard to a financial interest or employment held at the time of appointment, provided that it is publicly disclosed to and approved by the appointing authority and the Commission.

Finally, Section 5. D. addresses prohibitions regarding gifts:

D. Solicitation or acceptance of gifts. A St. Mary's County official or employee shall not:

1. Solicit any gift nor knowingly accept any gift, directly or indirectly, from any person or business entity that he/she knows or has reason to know:
 - a. Is doing business with the office, agency, board or commission with which such official or employee is affiliated; or
 - b. Has an interest that may be substantially and materially affected, in manner distinguishable from that of the public generally, by the performance or nonperformance of his/her official duty.

DISCUSSION

The public has the right to governance free from undue influence upon its elected officials. The Lessor, as a Public Official, is subject to the Ordinance meant to safeguard and hold inviolate the public's trust in the foregoing premise. The Ethics Commission is authorized by Section 4.F of the Ordinance to provide advisory opinions to persons governed by the Ordinance. The following discussion and conclusions are an expression of the opinion of the Ethics Commission in light of the facts presented and the current law:

ANALYSIS AS A GIFT

A preliminary question is whether the Lessor, as a subordinate of the Lessee, has bestowed upon the Lessee a gift, which, at a minimum, must be reported as such pursuant to the Financial

Disclosure provisions of the Ordinance. The question presented in this regard is whether there is “adequate and lawful consideration” with regard to the lease agreement.

While the nominal price set forth in the agreement may not be adequate and lawful consideration, the transaction, as presented to the Ethics Commission, viewed as a whole, reflects costs avoided by the Lessor and paid by the Lessee. That is, the Lessor, under the lease agreement, maintains ownership of the horse, but avoids the costs of feeding, boarding and otherwise caring for the animal; costs that would accrue so long as the Lessor maintained her ownership of the animal. The Lessee’s testimony is that those costs she bears, not customarily costs borne by the lessee of a horse, and is equivalent to the cost she would pay on the open market to lease a similar horse. Without evidence to contradict that testimony, the Ethics Commission accepts that as true; thus finding that the lease arrangement does not constitute a gift. The Ethics Commission reserves the right to revisit this determination in the event new or different facts arise.

That being said, however, the business and personal arrangements of this type between the Superintendent and a member of the Board of Education, which supervises the Superintendent, should be disclosed in future Financial Disclosure Statements.

ANALYSIS OF IMPARTIALITY AND PRESERVATION OF THE PUBLIC TRUST

Section 5. C. 2 of the Ordinance prohibits an official from holding any employment relationship or having a financial interest which would impair the impartiality or independence of judgment of the official. A significant fact in this portion of the inquiry is whether the offer of the lease agreement by the Lessor to the Lessee creates at least an appearance of impairing the impartiality of judgment of the Chair of the Board of Education.

It is laudable that the Chair of the Board of Education, Lessee, has recused herself from the interview and deliberations regarding the selection of the Acting Superintendent, Lessor, for the position of Superintendent. Due to the progression of circumstances, however, the lease arrangement has become public knowledge prior to any request for the Commission's consideration of the matter; the public perception having been established before the Ethics Commission has had an opportunity to consider this matter. Therefore, the Commission is forced to render its advisory opinion in context of the potential public perception that there is a special relationship that will taint the objectivity of the Chair of the Board of Education in the selection of the next Superintendent.

The Ethics Commission recommends that the Chair of the Board of Education continue to recuse herself from the Superintendent selection process insofar as that process pertains to or includes discussion, deliberation or consideration of the Acting Superintendent, Lessor. Such a recusal will assure the public that the election of a new superintendent is actually and perceptively free of improper influence by an outside agreement between the Chair and one of the candidates.

CONCLUSION

The Commission notes the following provision of the Ethics Ordinance as pertinent to its advice:

Section 2. – Statement of Purpose and Policy

- A. St. Mary's County, recognizing that our system of representative government is dependent in large measure upon the people having trust and confidence in their public

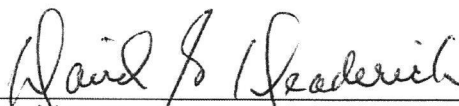
officials and employees, finds and declares that the people have a right to be assured that the impartiality and independent judgment of public officials and employees will be maintained.

B. This confidence and trust is eroded when the conduct of St. Mary's County business is subject to improper influence or even the appearance of improper influence.

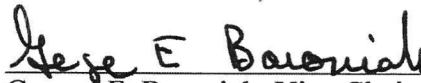
In consideration of the foregoing, it is the advice of the St. Mary's County Ethics Commission that:

1. This lease agreement and the business and personal arrangements of this type between the Superintendent and a member of the Board of Education, which supervises the Superintendent, should be disclosed in future Financial Disclosure Statements.
2. That the Chair of the Board of Education continue to recuse herself from the Superintendent selection process insofar as that process pertains to or includes discussion, deliberation or consideration of the Acting Superintendent, Lessor.

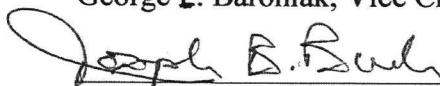
ST. MARY'S COUNTY ETHICS COMMISSION



David S. Deaderick, Chair



George E. Baroniak, Vice Chair



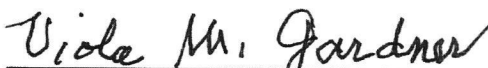
Joseph B. Bush, Member

Recused

Zora Siemasko, Member



Arthur F. Goeller Member



Viola M. Gardner, Alternate