

**Frederick County Ethics Commission**  
**Minutes for the Public Meeting of Friday, October 17, 2008**

Present: Karl W. Bickel, Commission Member  
Paula C. Bell, Commission Member  
E. Donald Foster, Alternate Commission Member  
Linda B. Thall, Senior Assistant County Attorney

Absent: Andrew T. Jones, Chairman

The Frederick County Ethics Commission met at 7:00 p.m. on October 17, 2008, at the Office of the County Attorney on the 2<sup>nd</sup> floor of Winchester Hall, 12 East Church Street, Frederick, Maryland 21701.

**Approval of the minutes** – The Commission considered the minutes from its September 4, 2008, meeting. A draft of the minutes was circulated to the members before the meeting.

**MOTION:** Mr. Foster made a motion to approve the minutes. Ms. Bell seconded the motion, which was approved unanimously.

**Annual Public Ethics Law Report** – Copies of the Public Ethics 2008 Annual Report to the Frederick County Ethics Commission, dated August 22, 2008, were distributed at the meeting to each member.

**2008 Financial Disclosure Statements** – A disk containing the 2008 annual financial disclosure statements from employees and officials who filed their disclosure statements electronically was provided to each Commission member. Each Commission member will review the disclosure statements.

**Meeting with a member of the Affordable Housing Council and discussion of the member's request for an Advisory Opinion** – A member of the Affordable Housing Council (AHC) who has requested an advisory opinion met with the Ethics Commission and answered the Commission's questions. After the AHC member left the meeting, the Ethics Commission discussed the conflict of interest question presented. The Commission instructed the Senior Assistant County Attorney to prepare an advisory opinion addressing the conflict of interest standards in the Ethics Ordinance and the AHC Bylaws and the need for AHC members to avoid the appearance of a conflict of interest. The Commission determined that an AHC member who is also a realtor in Frederick County should recuse himself from AHC funding decisions involving clients whom he represents as a real estate agent.

**Update on recommendation to the Board of County Commissioners for change to the Ethics Ordinance** – The Commission previously recommended that the Board of County Commissioners change the section of the Ethics Ordinance that designates the officials and employees who are subject to the Ordinance's annual financial disclosure filing requirements.

The Senior Assistant County Attorney advised the Commission that the County Commissioners want to schedule a worksession on this request and invited the Commission members to attend and participate in the worksession. The Commission members present indicated that they would try to attend the worksession if their schedules permitted. The Senior Assistant County Attorney will contact the Commission Chair to determine whether he would like to attend the worksession and participate in the presentation.

**Advisory Opinion 08-04** – The Commission members previously received a draft of this Advisory Opinion. The Commission approved the Advisory Opinion as drafted. The Senior Assistant County Attorney will contact the Commission Chair to obtain his signature on the Advisory Opinion.

**Letter from Delegate Clagett** – The Commission discussed the second letter from Delegate Galen Clagett regarding an Opinion issued by the Commission. The Commission previously received a draft response to Delegate Clagett's letter.

**MOTION:** Mr. Foster made a motion to have the Commission Chair sign the letter to Delegate Clagett as drafted. Ms. Bell seconded the motion, which was approved unanimously.

**Request for an Advisory Opinion** – Before its meeting, the Commission received a request for an Advisory Opinion from a County employee who won a prize at a conference that he attended. The business awarding the prize has a contract with the County. The Commission determined that acceptance of the prize would not constitute a conflict of interest under the Ethics Ordinance and directed the Senior Assistant County Attorney to draft an Advisory Opinion.

**Request for an Advisory Opinion** – The Commission members discussed the request for an Advisory Opinion made by a newly appointed member of a County advisory commission who also owns a company that does business with the County.

**MOTION:** Mr. Foster made a motion to have an Advisory Opinion drafted that would state that there does not appear to be a conflict of interest at present based on the fact that the yearly value of the contract that the advisory commission member's business has with the County is under \$1,000. The Advisory Opinion would also find that if the annual value of the contract reaches \$1,000 or more in the future, an exemption from the conflict of interest provisions is granted. Ms. Bell seconded the motion, which was approved unanimously.

**Reception for Board and Commission members** – The Board of County Commissioners has invited the Commission members to a reception on October 23. Responses to the invitation are due by October 21.

**Lobbying Activity Reports** – The Commission members reviewed a sampling of the Lobbying Activity Reports submitted by registered lobbyists. The Senior Assistant County Attorney briefed the Commission on the process used by the County Attorney's Office when reviewing

the reports and monitoring compliance with the reporting and notice requirements of the Lobbying Ordinance.

**MOTION:** Ms. Bell made a motion to have the Commission determine that it was not necessary for the Commission members to review every Lobbying Activity Report, given that the reports were reviewed by the Senior Assistant County Attorney and that any problems or concerns with the reports were brought to the Commission's attention. Mr. Foster seconded the motion, which was approved unanimously.

**Questions about the reporting requirements of the Lobbying Ordinance** – The Senior Assistant County Attorney brought to the Commission's attention several issues that had come to her attention with regard to application of the Lobbying Ordinance. The Commission members discussed these questions and provided guidance on interpretation and application of the Ordinance.

The Commission considered the requirement in Section 1-7.2-2(A)(1)(a) of the Lobbying Ordinance that applies to communications with "1 or more County officials in the presence of 1 or more County officials." The Commission determined, after looking at the comparable State law provision and considering possible interpretations of this requirement, that the language quoted should be construed to apply to in-person communications with a single County official. As some lobbyists construed this provision differently when completing their 2008 Activity Reports (as reflected on those lobbyists' Activity Reports), the Commission agreed that this construction would be applied prospectively and that amendment of 2008 Activity Reports already filed would not be required. The Commission decided to recommend amendment of this Section to more clearly include communications with a single County official in the presence of that official.

With regard to the payment of late fees for Activity Reports not filed by the July 31, 2008, deadline, the Commission determined that it would waive the late fees for lobbyists who registered but never met the compensation or spending tests in the Lobbying Ordinance that trigger the registration requirements. Other lobbyists who registered because they were required to do so and who filed their Activity Reports late should be assessed the late fee.

The Commission decided that the Lobbying Ordinance requires persons who prematurely registered as lobbyists based on an erroneous expectation that registration would be required to file Activity Reports. Further, the Commission determined that once a person makes the decision to register as a lobbyist, that person cannot later change his or her mind and receive a refund of the registration fee paid at the time of registration.

The Commission was advised that some persons had been identified on lobbying registration forms filed by other lobbyists as persons who were also expected to qualify as lobbyists under the Lobbying Ordinance. In fact, not all of the persons listed qualified as lobbyists and therefore did not register. The Commission determined that the Lobbying Ordinance does not require persons who never registered as lobbyists (and who were not required to do so under

the Ordinance because they did not meet any of the tests for qualification as a lobbyist) to file Activity Reports.

Section 1-7.2-2(A)(1)(b) of the Lobbying Ordinance requires registration as a lobbyist when the lobbyist “earns” a cumulative amount of at least \$2,500 as compensation for covered communications with County officials. However, Section 1-7.2-5(B)(2)(a) requires that the Lobbying Activity Report filed by the lobbyist provide the “total compensation paid” to the lobbyist. It was brought to the Commission’s attention that a lobbyist may have *earned* – but not *received* – the compensation by the time that the lobbyist filed his or her Activity Report and that this apparent disconnect caused some confusion about how to treat compensation that had been earned but not received. The Commission found that this can only be addressed through amendment of the Lobbying Ordinance. The Commission asked the Senior Assistant County Attorney to research State law to determine whether this inconsistency is also present in that law.

### **Adjournment**

**MOTION:** Ms. Bell moved to adjourn the meeting. Mr. Foster seconded the motion, which was approved unanimously.

The Ethics Commission adjourned its meeting at 9:00 p.m.

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Linda B. Thall, Senior Assistant County Attorney