



FREDERICK COUNTY GOVERNMENT

FREDERICK COUNTY ETHICS COMMISSION Office of the County Attorney

Jan H. Gardner
County Executive

Brian Duncan, Chair

DECISION ON THE COMPLAINT FROM PATRICK ALLEN

Description of the Complaint

On February 26, 2015, the Ethics Commission received a complaint from Patrick Allen. The complaint made the following allegations:

County Council members [names omitted], by sending a letter to the Governor of Maryland, using County Council stationary and without consultation, deliberation and/or approval of the “Council as a Body”, have violated both Maryland State Ethics Law as well as governing provision(s) stipulated in the Frederick County Charter.

Please see [names omitted] letter, dated February 20, 2015, as evidence of the violation(s). Copy of letter is placed below the signature block of this ethics complaint document.

Supporting comments from County Executive Jan Gardner, County Council President Harold “Bud” Otis and an admission by Councilman [name omitted] that he and [name omitted] did not consult with, discuss, or seek approval of the letter and its content with the full County Council prior to sending the letter on his County Council stationary and on top of signatures by himself and fellow County Council member [name omitted].

GARDNER: “To a certain extent, it’s a rogue letter from two council people,” County Executive Jan Gardner said. “It doesn’t carry the weight of a letter from the county executive or the council as a whole.”

OTIS: Council President Bud Otis said to his knowledge, [names omitted] did not discuss the letter with other council members before sending it.

[NAME OMITTED]: [Name omitted] said he did not engage the full council about his letter to Hogan.

The complaint alleges that the two Council Members violated Section 1-7.1-5(G) of the Ethics Ordinance and Section 203 of the County Charter. The body of the complaint also contains an allegation that the Council Members violated the State Ethics Law.

In an accompanying email to the Ethics Commission, Mr. Allen notes that the letter explicitly asks the State Governor to waive the return of the \$200,000 grant money provided to Frederick County by the State or, in other words, to forgive a debt that the County owes the State. Mr. Allen notes that the two Council Members do not “have the legal authority, nor judicial privilege, to act on behalf of the County or the County Council in their attempt to conduct Frederick County business with the office of the Governor.”

Matters outside the jurisdiction of the Ethics Commission

A. Violation of the State Ethics Law

The first paragraph of the complaint alleges that the conduct by the two County Council Members violated the State Ethics Law. No further explanation or reference to the State Ethics Law was made by Mr. Allen. The County Ethics Commission has no jurisdiction to consider claims that the State Ethics Law has been violated. To the extent that the complaint can be construed to contain an allegation of a violation of the State Ethics Law, that claim is dismissed. The Commission will, however, forward a copy of Mr. Allen’s complaint to the State Ethics Commission for such action as the State Ethics Commission finds appropriate.

B. Violation of the County Charter

The complaint also alleges that by acting on their own to send the letter to the Governor, the two Council Members violated Section 203 of the County Charter. That Section states that:

In all functions and deliberations, the Council shall act as a body. It shall have no power to create standing committees or to delegate any of its functions and duties to a smaller number of its members than the whole. The Council may, however, appoint special ad hoc committees solely for the purpose of inquiry and fact finding.

The Ethics Commission has no jurisdiction over claims that the County Charter has been violated. For that reason, the claim that the County Charter was violated is dismissed. The President of the County Council is already aware of the letter sent by the two Council Members and may take such action as he deems appropriate.

Allegation of violation of the County Ethics Ordinance

As the basis for Mr. Allen’s complaint is the letter sent to the Governor by the Council Members, the body of that letter is set forth below:

Congratulations Governor!

We are contacting you on behalf of a Frederick County Business owner. Stanley H. Snow of Aurora Health Management, LLC, has reached out to us to contact you concerning Citizens Care and Rehabilitation Center and Montevue Assisted Living in Frederick.

As you may be aware, the Board of Public Works staff has twice recommended the approval of Frederick County's request to approve the sale of these two facilities. Former Governor Martin O'Malley had requested the opinion of the Board of Public Work's [sic] counsel in the first hearing. The Board of Public Work's [sic] counsel advised there was no reason to withhold the approval. The Board of Public Works, however, refused to vote on this matter.

We are respectfully requesting that you look into this matter and determine if, with a new Chair, the Board of Public Works will follow its staff and counsel's recommendation to approve the sale of Citizens Care and Rehabilitation Center and Montevue Assisted Living and waive the return of the \$200,000.

Thank you for considering this request. We can be reached at the numbers below.

It is alleged that by sending this letter the two Council Members violated the "use of prestige of office" provision in the Ethics Ordinance. That section states as follows:

Section 1-7.1-5. CONFLICTS OF INTEREST

(G) Use of prestige of office.

(1) An official or employee may not intentionally use the prestige of office or public position for the private gain of that official or employee or the private gain of another.

(2) This paragraph does not prohibit the performance of usual and customary constituent services by an elected official without additional compensation.

It seems clear that the letter was sent, at least in part, to benefit Mr. Snow's company, which has an agreement to purchase Citizens Care and Rehabilitation Center and Montevue Assisted Living from the County government.¹ That is not the end of the inquiry, however. The Ethics Commission must also decide whether the letter falls within the exception in Section 1-7.1-5(G)(2) as a usual and customary constituent service on the part of the elected officials. If this is considered to be such a constituent service, there would be no violation of this conflict of interest provision.² The Ethics Ordinance does not define the term "constituent".

Mr. Allen asserts that Mr. Snow cannot be a constituent of the Council Members because Mr. Snow does not live in Frederick County. Mr. Allen also asserts that Aurora Health Management, LLC is not located in Frederick County and, therefore, cannot be considered a

¹ Arguably, the Council Members could contend that the County also stood to benefit from their letter – an argument that the Ethics Commission does not need to decide.

² There is no allegation that the Council Members were compensated by Mr. Snow for sending the letter.

constituent of the Council Members. The letter to the Governor, however, suggests that the Council Members considered themselves to be acting on behalf of a constituent. The Council Members begin their letter by stating that they are contacting the Governor “on behalf of a Frederick County Business owner.” This is a reference to Aurora Health Management’s operation of the Citizens Care and Rehabilitation Center and Montevue Assisted Living in Frederick. A plain reading of the letter demonstrates that the Council Members considered Mr. Snow and Aurora Health Management to be constituents by virtue of their operation of these entities located in Frederick. The Ethics Commission believes that a business entity that operates a business in Frederick County can be considered a constituent for purposes of this conflict of interest provision in the Ethics Ordinance.

It is not uncommon for elected officials to send letters to other governmental agencies or officials in support of businesses that are either located in their jurisdiction or may be interested in moving to the jurisdiction. The letter sent to the Governor falls into this category. The Ethics Commission therefore finds that Section 1-7.1-5(G)(2) of the Ethics Ordinance applies. Accordingly, the Council Members did not violate the Ethics Ordinance by sending their letter to the Governor on behalf of Mr. Snow and Aurora Health Management.

Conclusion

For the reasons stated above, the Ethics Commission has determined that the two Council Members did not violate the conflict of interest provision in the County Ethics Ordinance by sending a letter to the Governor supporting a County business owner’s efforts to purchase the Citizens Care and Rehabilitation Center and Montevue Assisted Living.

August 12, 2015
Date

/s/
Brian Duncan, Vice Chair

cc: State Ethics Commission