



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

MEMORANDUM

TO: Dr. John Kenney, Chief
Aging and Disability Services
Department of Health and Human Services

FROM: ✓ Marc P. Hansen, Chief *Marc Hansen*
Division of General Counsel

DATE: April 21, 2004

RE: Commission on People with Disabilities -- Authority

Question

The Commission on People with Disabilities (Commission) has sent a letter to the United States District Court for the District of Columbia expressing its opposition to certain parts of a settlement in the case of *Kevin Ball, et al. v. AMC Entertainment, Inc., et al.* (Case No. 1:00CV00867). The Commission expressed concern that the settlement did not provide equal communication access for people who do not benefit from assistive listening devices. In the context of a different matter, the Commission proposes to send a letter to the National Restaurant Association that expresses dismay over that organization's recent endorsement of the ADA Notification Act. The Commission asserts that the Association's endorsement of the Notification Act implies that the member restaurants of the Association may not wish to comply with the Americans with Disabilities Act.

You have asked if the Commission has the legal authority to send these letters.

SHORT ANSWER

The Commission does not have the authority to send these letters, because neither action is authorized by the statute that creates the Commission. Moreover, by sending a letter to the United States District Court, the Commission has undertaken a role exclusively assigned by the Montgomery County Charter to the County Attorney.

DISCUSSION

Controlling Legal Principles

Administrative agencies, like boards, committees and commissions, derive their authority exclusively from the enabling document creating that agency. Therefore, a commission has no power beyond that assigned to it by the organic document that creates the commission.¹ In the case of the Commission on People with Disabilities, its enabling document is found in County law – specifically Sections 27-50 and 27-52 of the Montgomery County Code.

The basic legal principle that the Commission can exercise no power except that given to it by statute, must be set in the context of the Montgomery County Charter. The County Charter is the constitution for the County; it provides a broad organizational framework establishing the form and structure of County Government; it is the organic, fundamental law establishing the basic principles governing the relationships between the government and the people, and among the various governmental branches of the County Government.²

In the case of the Montgomery County Charter, Section 101 of the Charter vests all legislative powers in the Montgomery County Council. Section 201 of the Charter vests all executive power in the County Executive. Within the Executive Branch of Government, Charter Section 213 provides that the “County Attorney shall be the chief legal officer of the County, conduct all the law business of the County, be a legal advisor to the Council, and be the legal advisor to the County Executive, all departments, and other instrumentalities of the County Government.”

Analysis

The Commission does not have the authority to send the proposed letter to the Restaurant Association, because this action is not authorized by the statute that creates the Commission. Section 27-50 provides that the Commission was created “to advise the County Government” concerning development of policies for people with disabilities. Section 27-52 sets forth the duties of the Commission. These duties indicate that the Commission is to serve in an advisory capacity by studying, analyzing, identifying, and reviewing issues affecting people with disabilities, and making appropriate recommendations concerning the Commission’s conclusions to the County Government. The letter to the Restaurant Association is not within the statutory mission assigned to the Commission. The letter, in fact, engages the Commission in an indirect lobbying effort. The County Code has assigned responsibility for lobbying to the Office of Intergovernmental Relations. Section 2-64(J) of the Montgomery County Code provides that one of the functions of the Office of Intergovernmental Relations is to “provide coordination or liaison and, as appropriate, respond to legislation, regulations, or other policy issues involving nearby counties or states, municipalities within the County, regional agencies, the District of Columbia, and the federal government.”

¹ See *Brzoweki v. Maryland Home Improvement Commission*, 114 Md. App. 615, cert. den’d, 346 Md. 238 (1997).

² *Cheeks v. Cedlair Corp.*, 287 Md. 595 (1980).

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If the Commission has concerns regarding the ADA Notification Act and the position taken regarding that Act by the National Restaurant Association, the Commission should communicate those concerns to the Office of Intergovernmental Relations, which is the County agency charged by statute with coordinating the County's response to such issues.

The letter sent to the United States District Court is not authorized by statute. Nothing in Sections 27-50 or 27-52 suggest that the Commission is authorized to insert itself into a court action. In fact, the Code could not, by statute, authorize the Commission to appear in a court case, because that function has been exclusively assigned by Charter Section 213 to the County Attorney.

If the Commission believes that the County should participate in pending litigation, the Commission should advise the County Executive to that effect and request that Executive ask the County Attorney to intervene in the matter on behalf of the County.

If you have any questions or concerns regarding this advice, please let me know.

cc: Charles W. Thompson, Jr., County Attorney
Deborah Goodwin, Special Assistant to County Executive
Paul Folkers, Assistant Chief Administrative Officer
Anne Windle, Assistant County Attorney
Karen Federman Henry, Associate County Attorney
Edward Lattner, Associate County Attorney

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