



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

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MEMORANDUM

TO: Jerry Pasternak
Special Assistant to the County Executive

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

DATE: August 11, 2000

SUBJECT: Guidelines for Elected County Official Who Is A Candidate for Elected Office

You have asked me for guidelines that an elected County official should consider when running as a candidate for elected office.

Applicable Laws and Policies – Outline

1. Charter Section 406.

This Charter Section prohibits County officials, including the County Executive, from requiring a County employee to perform any service or work outside of the employee's official duties.

2. Charter Section 408.

This Charter Section requires County officers to devote their entire time during "official" working hours to the performance of official duties.¹

3. Code Section 19A-14(c).

This Section of the Montgomery County Public Ethics Law prohibits a public employee, including the County Executive, from using any County facility, property, or time for personal use or for the use of another unless the use is generally available to the public or authorized by a County law, regulation, or administrative procedure.

¹Charter Section 408 probably does not apply to the County Executive, because the Executive does not keep time. The Executive does not fill out time sheets and is not allotted annual or sick leave.

4. Interim Administrative Procedure 1-4, Assignment and Use of County Vehicles.

This Administrative Procedure prohibits an employee from using a County vehicle while engaged in or attending any political or partisan activity. A County employee may use a County vehicle to attend an official government activity or while on official County business. A County employee who is assigned an emergency/public safety² vehicle can use the vehicle for non-political, personal use if the employee is on call 24 hours a day, seven days a week to respond to emergencies and the vehicle is equipped with 2-way radio and/or local telephone communication devices.

5. Telephone Policy (June 25, 1997).³

The Chief Administrative Officer issued a Telephone Policy on June 25, 1997. The policy, in pertinent part, provides that telephones are provided to employees for use in conducting official business. The policy goes on to state, "Although the use of County telephones for personal telephone calls is discouraged, it is recognized that circumstances sometimes arise which necessitate personal calls from County phones. Such calls are to be kept to a minimum and should not disrupt the conduct of service or performance of official duties. Employees are to devote their entire working time to the performance of their duties."

6. Political Activity (May 4, 1998).⁴

The Chief Administrative Officer issued policy guidance regarding political activity of County employees on May 4, 1998. The policy encourages employees to exercise their constitutional and Charter rights to engage in political activities, but noted that it is "imperative that these activities take place outside of the business day and off of County premises." The policy notes, "In the event that a County employee or executive appointee becomes a candidate for an office, one must be particularly diligent to separate activities in connection with that candidacy from the workday responsibilities involved with County employment." Past Chief Administrative Officers have strongly recommended that employees who are candidates for office should consider taking leave without pay.

²The vehicle must also be approved as an "emergency" vehicle by the Maryland MVA.

³This policy was probably not intended to apply to elected officials.

⁴This policy was probably not intended to apply to elected officials.

Some Guidelines.

Although it is not possible to anticipate all situations in which these laws and policies may come into play, I have tried to set forth some guidelines for some perhaps easily anticipated situations.

- A. Do not put any bumper sticker, decal, placard, banner or insignia on a County vehicle. (Interim Procedure 4.0).
- B. Do not use a County vehicle to drive to a political activity. (Interim Procedure 3.6).
- C. Do not use County telephones for political activity. (CAO Memorandum, June 25, 1997). A candidate may wish to use a personal cell phone to conduct political activity. Because there may be some question about the appropriateness of using the cell phone on County property, it may be appropriate—as a general rule—not to take political calls while the candidate is in her or his County office.
- D. Do not conduct campaign activity on County property unless the area is a traditional public forum or a designated public forum. The candidate may use County facilities to the same extent as any other member of the public. Community Use of Public Facilities should be consulted for guidelines and rental rates. A meeting in a County facility that is closed to the public are not permitted.
- E. If a County employee works on the candidate's campaign, the employee should keep time and take leave as appropriate.

I hope this memorandum is helpful. Please let me know if you have any concerns or follow up questions.

MPH:vrp

cc: Charles W. Thompson, Jr., County Attorney