



OFFICE OF THE COUNTY ATTORNEY

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OPINION

December 6, 2002

TO: Hon. Elizabeth Kellar, Chair  
Montgomery County Ethics Commission

THROUGH: Charles W. Thompson, Jr. *Charles W. Thompson Jr. (mth)*  
County Attorney

Marc P. Hansen *Marc Hansen*  
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FROM: Judson P. Garrett, Jr. *Judson P. Garrett*  
Principal Counsel for Opinions and Advice

RE: Acceptance of "Honoraria" and Expense Reimbursement

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We are responding to the Commission's request for our opinion concerning the proper construction of the Montgomery County Public Ethics law regarding a public employee's acceptance of an honorarium and/or reimbursement for expenses in return for a speech or presentation. We understand that the Commission has not previously had an occasion to interpret this aspect of the Ethics law.

**QUESTIONS**

1. Does the Montgomery County Public Ethics Law prohibit a public employee from accepting an honorarium for speaking at a meeting or participating on a panel regarding a matter related to the employee's governmental activities?
2. Does the Montgomery County Public Ethics Law permit a county employee to accept reimbursement for expenses incurred for speaking at a meeting or participating on a panel regarding a matter related to the employee's governmental activities?

## ADVICE

The Montgomery County Public Ethics Law does not permit a public employee to accept an honorarium for speaking at a meeting or participating on a panel if the subject of his or her presentation or participation is directly and immediately related to the employee's governmental activities.<sup>1</sup>

A public employee may, however, accept reimbursement for reasonable expenses for food, travel, lodging, and scheduled entertainment in connection with a speech or panel presentation directly and immediately related to the employee's governmental activities.

Our advice is based on the following analysis of applicable law.

## APPLICABLE LAW

The Montgomery County Public Ethics Law contains two provisions that impact the acceptance of honoraria and expense-reimbursement for speeches or presentation related to a public employee's governmental activities: § 19A-16, concerning the solicitation or acceptance of gifts, and § 19A-14, concerning the use of the prestige of one's public office. In pertinent part, these provisions provide as follows:

### **Sec. 19A-16. *Soliciting or accepting gifts.***

(c) A public employee must not knowingly accept a direct or indirect gift from any individual or organization that the public employee knows or reasonably should know:

- (1) is registered, or must register, as a lobbyist on a matter that is or could be considered by the County agency with which the public employee is affiliated;
- (2) does business with the County agency with which the public employee is affiliated;

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<sup>1</sup> A public employee who receives a fee honorarium must either return it or transfer it to the County. Furthermore, although not controlled by the Ethics law, when a speech or participation is within the scope of a public employee's official duties, the employee, with the approval of his or her superiors, may participate on County time and, if necessary, at County expense in accordance with applicable personnel and finance County policies and procedures.

(3) owns or operates a business that is regulated by the County agency with which the public employee is affiliated; or

(4) has an identifiable economic interest that is different from that of the general public, which the public employee may substantially affect in performing the public employee's official duties.

(d) Subsection (c) does not apply to:

\* \* \*

(4) reasonable expenses for food, travel, lodging, and scheduled entertainment of the public employee, given in return for the public employee's participation in a panel or speaking at a meeting;

\* \* \*

(8) honoraria or awards for achievement.

(f) A public employee who receives a gift that the public employee must not accept under this Section must report the gift to the Commission, if otherwise required to report it, and return the gift to the donor or transfer the gift to the County.

**Sec. 19A-14. *Misuse of prestige of office....***

(a) A public employee must not intentionally use the prestige of office for private gain or the gain of another....

In addition, the speeches or panel presentations of a public employee also may implicate the Ethics law's prohibition against disclosing confidential information:

**Sec. 19A-15. *Disclosure of confidential information....***

(a) Except when authorized by law, a public employee or former public employee must not disclose confidential information relating to or maintained by a County agency that is not available to the public. A public employee or former public employee must not use confidential information for personal gain or the gain of another. Unless expressly prohibited by law, a public

employee may disclose validly obtained confidential information to another public employee if the other public employee reasonably needs the information to carry out the employee's official duties.

## ANALYSIS

### *The Scope of the Gift-Acceptance Prohibition.*

The gift-acceptance prohibition of § 19A-16(c) contains three elements: (1) knowingly accepting; (2) a gift; (3) from an individual or organization the public employee knows (or reasonably should know) belongs to one or more of four specific classes. Unless all of these elements are present, the gift-acceptance prohibition does not apply.

*The Knowledge Element.* "Knowingly" as used in a statute means "having knowledge"<sup>2</sup> or "acting consciously or intentionally."<sup>3</sup> "An individual acts 'knowingly' when he or she acts with awareness of the nature of his or her conduct."<sup>4</sup> It is difficult to envision circumstances under which the acceptance of an honorarium or expense reimbursement would not be conscious or intentional or with knowledge. The acceptance of an honorarium or expense reimbursement, therefore, is presumptively "knowingly," *i.e.*, a public employee would bear the burden of demonstrating that the acceptance of the honorarium or expense reimbursement was not conscious or intentional or with knowledge.

*The Gift Element.* For Ethics law purposes, "gift means the transfer of anything of economic value ... without an exchange of consideration of at least equal value."<sup>5</sup> Therefore, if an honorarium does not equal or exceed the reasonable value of a public employee's speech or presentation, the honorarium is not a gift, and the gift prohibition does not apply.<sup>6</sup>

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<sup>2</sup> *Greenway v. State*, 8 Md. App. 194, 196 (1969).

<sup>3</sup> *State v. Bell*, 351 Md. 709, 719-20 (1998).

<sup>4</sup> BLACK'S LAW DICTIONARY 873 (6th ed. 1990)(citing *State v. Kroll*, 682 S.W. 2d 78, 81 (Mo. App. 1984)).

<sup>5</sup> MONT. CO. CODE § 19A-4(h).

<sup>6</sup> It would seem to follow that expense reimbursement also would not be a gift and the gift acceptance prohibition would not apply if the reimbursement, plus any honorarium, did not exceed the reasonable value of the public employee's speech or presentation. However, this issue has been moot by a specific statutory exception we shall discuss below.

*The Prohibited-Donor-Class Element.* The gift-acceptance prohibition is limited to gifts from individuals and organizations that the public employee knows or reasonably should know is a member of one or more of four specified classes: (1) those who are lobbying a matter that is or could be considered by the employee's agency; (2) those who do business with the employee's agency; (3) those who own or operate a business that is regulated by the employee's agency; and (4) those who have an identifiable economic interest different from that of the general public that may be substantially affected by the employee's duties.<sup>7</sup> If the donor is not a member of one of these classes, the gift-acceptance prohibition does not apply. Furthermore, even if the donor is a member of one of these classes, the gift-acceptance prohibition does not apply unless the employee knows or reasonably should know that the donor is a member of the class.

### *Exceptions to the Gift-Acceptance-Prohibition.*

Subsection 19A-16(d) contains nine statutory exceptions to subsection (c)'s gift-acceptance prohibition. The exceptions pertinent to this inquiry are: "reasonable expenses for food, travel, lodging, and scheduled entertainment of the public employee, given in return for the public employee's participation in a panel or speaking at a meeting,"<sup>8</sup> and "honoraria or awards for achievement."<sup>9</sup> If an honorarium or expense-reimbursement is within one of these exceptions, the gift-acceptance prohibition does not apply, even if the three elements of the gift-acceptance prohibition are present.

This is not, however, the end of the story. As demonstrated by the advisory opinions of the State Ethics Commission and its predecessor, the former State Board of Ethics, the term "honoraria" may be construed narrowly to mean only honoraria that are not for services rendered. Because the County Ethics law does not define this term, we must look to the history and context of the County law in order to determine the correct meaning of "honoraria" for these purposes.<sup>10</sup>

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<sup>7</sup> MONT. CO. CODE § 19A-16(c).

<sup>8</sup> *Id.* § 19A-16(d)(4).

<sup>9</sup> *Id.* § 19A-16(d)(8).

<sup>10</sup> As we previously have advised, when divining the intent underlying a legislative enactment in Maryland, the principles of statutory construction always permit the consideration of "external manifestations" or "persuasive evidence" of legislative intent. These include the cause or necessity of the law; its objectives and purposes; its history; its relationship to earlier and subsequent legislation; prior and contemporaneous statutes; and other material that fairly bears on the fundamental issue of legislative purpose or goal, which becomes the context within which the particular language is read in a given case. *See our*

## *The History of the County's Public Ethics Law.*

Although Montgomery County had a Code of Ethics prior to the enactment of the State Ethics law,<sup>11</sup> the County's Ethics law, in general, and its gifts-acceptance and prestige-of-office prohibitions, in particular, are rooted in the State Ethics law as it was originally enacted in 1979.<sup>12</sup> In pertinent part, that State legislation, which was codified in then Article 40A of the Maryland Code, contained the following prohibition on the acceptance of gifts:

### § 3-106. Solicitation or Acceptance of Gifts.

(a) ...No official or employee may knowingly accept any gift, directly or indirectly, from any person whom the official or employee knows or has reason to know:

- (1) is doing or seeking to do business of any kind with his agency;
- (2) is engaged in activities which are regulated or controlled by his agency;
- (3) has financial interests which may be substantial and materially affected, affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his official duty; or
- (4) is a registrant [*i.e.*, lobbyist] with respect to matters within his jurisdiction.<sup>13</sup>

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May 28, 2002, opinion concerning the meaning of the term "official responsibility" as used in the post-county-employment provisions of the Montgomery County Public Ethics Law. In addition, the County Council has statutorily expressed its intent that the Ethics law be liberally construed to accomplish its policy goals. § 19A-2(d).

<sup>11</sup> See, e.g., 1971 L.M.C., ch 18 (codified at 1972 MONT. CO. CODE, Art. VIII, § 2-129 *et. seq.*)

<sup>12</sup> See LAWS OF MD. (1979), ch. 513 (S. B. 1120) (codified originally as Article 40A of the State Code). Prior to 1979, state law provided for the Governor to promulgate rules and regulations establishing a Code of Ethics for all executive branch officers and employees in the area of possible conflict between their private interests and official duties or State employment. Exercising that authority, the Governor promulgated a Code of Ethics and established a Board of Ethics that investigated alleged violations of that Code and rendered advisory opinions as to its application. See generally, 62 *Op. Att'y Gen.* Md. 431 (1977).

<sup>13</sup> Section 1-201(o) defined the term "gift" to mean the transfer of anything of economic value regardless of the form without adequate and lawful consideration.

(b) Unless a gift of any of the following would tend to impair the impartiality and the independence of judgment of the official or employee receiving it or, if of significant value, would give the appearance of doing so, or, if of significant value, the recipient official or employee believes, or has reason to believe, that it is designed to do so, subsection (a) does not apply to:

\* \* \*

(4) reasonable expenses for food, travel, lodging, and scheduled entertainment of the official and spouse or the employee and spouse for a meeting which is given in return for participation in a panel or speaking engagement at the meeting; [or]

\* \* \*

(8) honoraria.

The 1979 State Ethics law also contained a prestige-of-office prohibition,<sup>14</sup> a local-law mandate that required each county to enact local conflicts of interest provisions “similar to the provisions” of the State law,<sup>15</sup> and a model-local-law requirement mandating the State Ethics Commission to adopt, among other things, model conflicts of interest provisions that could be adopted by or imposed upon any local jurisdiction.<sup>16</sup>

### *State Ethics Commission Advisory Opinions.*

Beginning in May, 1980, the State Ethics Commission, which is uniquely qualified to construe the State Ethics law,<sup>17</sup> issued a series of published opinions addressing the meaning

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<sup>14</sup> § 3-104 (“A public official or employee may not intentionally use the prestige of his office for his own private gain or that of another...”).

<sup>15</sup> § 6-101. (A local provision, however, could be “modified to the extent necessary to make [it] relevant to the prevention of conflicts of interests in that jurisdiction.” § 6-101 (b)).

<sup>16</sup> § 2-103(i). Those models currently appear as Appendices A and B of Title 19A of the Code of Maryland Regulations (COMAR).

<sup>17</sup> The State Ethics Law empowers the State Ethics Commission to administer that law, to publish and make available to persons subject to that law and to the public information that explains the law, to adopt by regulation model provisions for local governments that relate to conflicts of interest, to issue advisory opinions regarding the application of that law, and to entertain, hear and dispose of complaints of violations of the State law. *See* MD. CODE ANN., STATE GOV'T §§ 15-104(3); 15-205(a) (1), (a) (6), and (b) (1) (i); 15-

of “honoraria” for the purposes of the State’s gift-acceptance and prestige-of-office prohibitions. Following the advisory opinions of its predecessor, the State Board of Ethics, which had administered a Code of Ethics established by Executive Order of the Governor, the Commission advised:

Section 3-106 (a) is a general prohibition against the acceptance of gifts by State officials or employees. Under the Law, a gift generally is defined as the transfer of anything of economic value regardless of its form without adequate and lawful consideration. An exception to the prohibition against the acceptance of gifts is § 3-106(b)(8) ... which permits officials and employees to accept honoraria. However, *the Commission does not interpret this provision to be a blanket grant of permission for officials and employees to accept the gifts or fees in situations similar to this one. We believe the honoraria exception is intended to cover those situations where an official or employee is presented with a free and gratuitous gift in recognition of some charitable, scientific, educational, artistic, civic or similar achievement, and for which the official or employee has neither rendered, nor is expected to render any significant service to the organization making the gift. This definition of honoraria is distinguishable from the payment of fees for services rendered.* Further, we believe that the substance and not the form of this transaction should determine whether a payment is an honorarium; merely calling a payment an honorarium does not classify the payment as such for purposes of § 3-106(b)(8) [the gift-acceptance prohibition]. In this case, therefore, the payment is not an honorarium and is not covered by [the State gift-acceptance prohibition].<sup>18</sup> (Emphasis added.)

It does not necessarily follow, however, that a State official or employee is free to accept an “honorarium” for services rendered, *e.g.*, for giving a speech or presentation. Indeed, the State Ethics Commission has repeatedly interpreted the State prestige-of-office prohibition to forbid the acceptance of “honoraria” for a speech, presentation or other service directly and immediately related to the employee’s governmental activities:

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301; and 15-401- 405.

<sup>18</sup> *Md. State Ethics Com. Opinion No. 80-7*, XVIII COMAR 19A.80.07 (May 5, 1980) (concerning an honorarium for providing editing services to a Federal agency regulating activities within the purview of a state official’s responsibilities) (emphasis added).



The [former] Board of Ethics, under its power to suspend the [then] Code [of Ethics] in cases similar to this one, adopted the view that executive officials and employees could accept speaking, writing, public appearance and similar fees where the dominant factor in the offering of the fees was the individual's non-State employment related duties. However, in those cases where an official performed actions directly and immediately related to their current duties, the Board prohibited the official from accepting fees for performing the actions. The Board reasoned that under these circumstances the actions undertaken went with the job, and that in such a case it would constitute the intentional misuse of the official's prestige of office to accept fees for the service rendered .... Title 19 COMAR Opinions 96, 100, 105, 131.<sup>[19]</sup> *The Commission adopts its predecessor Board's interpretation that the prohibition against the intentional use of an official's prestige of office is a restriction on the acceptance by an official of any fee for services directly and immediately related to the official's duties.*

The question then, is whether the [service rendered] was directly and immediately related to the official's State duties.<sup>20</sup>

Although reimbursement for reasonable expenses incurred by a conference presenter would seem to be no less a gift than a fee-for-service honorarium, the State Ethics Commission has not applied a similar fee/non-fee distinction to the acceptance of expense reimbursement. Rather, because the State Ethics law, like the Montgomery County law, has

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<sup>19</sup> Opinion No. 96, 4:18 Md. R. 1429 (1977)(Historic Site Surveyors may accept reasonable fees or honorariums [sic] in reimbursement for expenses for giving lectures or talks before outside groups on matters of historic preservation"); Opinion No. 100, 4:27 Md. R. 2136 (1977)("State employees should not accept honoraria or fees for television appearances, preparation of newspaper articles, service on advisory committees, speeches or similar activities which they may be called upon to perform primarily because of their State duties"); Opinion No. 105, 5:8 Md. R. 635 (1978)(Asst. Secretary of Budget and Fiscal Planning permitted to accept honorarium to contribute an article as a result of his prior membership in the State Legislature and not as a result of his current executive branch position); Opinion No. 131, 6:14 Md. R. 1231 (1979) ('State employees invited by the [Maryland] Academy [of Sciences] to join the [Environmental Research Guidance Committee] should not be permitted to receive ... honoraria since their expertise relates directly and immediately to their State job").

<sup>20</sup> *Id.* (Emphasis added.) See also Opinion No. 80-8 (an "honorarium" for teaching a course was a fee for services, not a gift, and, consequently, was tested under the prestige-of-office prohibition); Opinion No. 81-32 (applying the prestige-of-office standard to an "honorarium" for speaking at a Legislative Reference Services Conference); Opinions No. 83-9 and 83-11 (acceptance of "honoraria" for giving a Maryland Construction Law course were tested under the prestige-of-office standard).

expressly exempted reasonable reimbursement for certain kinds of expenses from the gift-acceptance prohibition, the Commission necessarily has viewed such reimbursement as a gift, and has advised that a state official or employee may accept such gifts from an entity doing business with his or her agency “if the reimbursement does not impair, tend to impair, or give the appearance of impairing the employee’s impartiality and independence of judgment.”<sup>21</sup>

Thus, when the 1983 Montgomery County Ethics law took effect, the honorarium exception of its model, the 1979 State Ethics law, had repeatedly been construed not to include a presentation-fee honorarium, and the prestige-of-office provision of that State model had been read to prohibit the acceptance of a presentation-fee honorarium directly related to the public duties of a State official or employee. Nevertheless, the State Ethics Commission had interpreted the expense-reimbursement exception as permitting the acceptance of all statutorily specified expenses — even when directly related to the public duties of a State official or employee — so long as the reimbursement did not impair, tend to impair, or give the appearance of impairing the official or employee’s impartiality and independence of judgment. This administrative construction of the State Ethics law and its predecessor, the State Code of Ethics, by the agencies charged with administering them is entitled to deference, and legislative acquiescence in that interpretation “gives rise to a strong presumption that the interpretation is correct.”<sup>22</sup>

### *The 1983 Montgomery County Ethics Law.*

In direct response to the local law mandate of the 1979 State Ethics law, Montgomery County rewrote its County Ethics law in 1983.<sup>23</sup> That County legislation, which created the scope and structure of the current County Ethics law, resulted from the consolidation of two separate bills: Bill 70-81 (an Administration bill that drew from the existing Montgomery County Ethics law, the State Ethics law, and, to a lesser extent, the State Ethics Commission’s model for local ethics laws in larger local jurisdictions<sup>24</sup>) and Bill 75-81

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<sup>21</sup> Opinion No. 81-16, COMAR 19A.81.16.

<sup>22</sup> *Morris v. Prince George's County*, 319 Md. 597, 613, 573 A.2d 1346, 1354 (1990) (quoting *Sinai Hosp. v. Dep't of Employment*, 309 Md. 28, 46, 522 A.2d 382, 391 (1987)).

<sup>23</sup> 1983 L.M.C., ch. 1, § 1 (Bill 70/75-81) (codified at 1984 MONT. CO. CODE, Ch. 19A).

<sup>24</sup> In his written testimony to the County Council, the County Executive stated:

I have presented you with a Comprehensive Ethics Bill, Bill 75-81. This bill combines the rigorous requirements of Montgomery County’s longstanding ethics

(which a council sponsor “patterned after the State Ethics Commission model<sup>25</sup>). A Legislative Request Report on these jointly considered bills stated their identical goals and objectives as follows:

To establish a comprehensive and comprehensible County Ethics Law which would satisfy the requirements of the State Public Ethics Law. Enactment of a County Ethics Law which is similar to the State’s Public Ethics Law would enable the County to draw upon the body of interpretative opinions issued by the State Ethics Commission, when confronted with questions having a common basis.<sup>26</sup>

Ultimately, the bills were consolidated into one Ethics Bill (Bill 70/75-81), which was enacted on July 7, 1982, approved by the Executive on July 20, 1982, and took effect January 1, 1983. In pertinent part, the enacted bill contained the following prestige-of-office and gift-acceptance prohibitions:

Sec. 19A-9. Misuse of prestige of office....

(a) A public official or employee may not intentionally use the prestige of his office for his own private gain or that of another.

Sec. 19A-11. Solicitation or acceptance of gifts.

(b) No official or employee may knowingly accept any gift, directly or indirectly, from an “interested person” which, for the purposes of this

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law with the requirements of the State law. In reviewing the model promulgated by the State Ethics Commission, we found many cases where the State ethics law itself was clearer or more stringent than the model. Therefore, for the most part, provisions of Article 40A of the Annotated Code were used rather than provisions of the model authored by the State Ethics Commission.

Statement of County Executive Gilchrist, Public Hearing – Bills 70-81 and 75-81– Comprehensive Ethics Law, contained in the Office of Legislative Information Services’ microfiche file on Bill 70/75-81.

<sup>25</sup> May 28, 1982, memorandum from the Committee On Government Management and Process to the County Council, Office of Legislative Information Services’ microfiche file on Bill 70/75-81.

<sup>26</sup> Undated, unsigned, one-paged document, entitled Legislative Request Report, identifying David J. Frankel, Legislative Counsel, as the “Source of Information,” Office of Legislative Information Services’ microfiche file on Bill 70/75-81.

chapter, means the official or employee knows or has reason to know:

(1) Is doing or seeking to do business of any kind with the county or an agency;

(2) Is engaged in activities which are regulated or controlled by the county or an agency;

(3) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or non performance of his official duties; or

(4) Is a registrant with respect to matters within the employee's or official's jurisdiction.

(c) Unless a gift of any of the following would tend to impair the impartiality and the independence of judgment of the official or employee, would give the appearance of doing so or the recipient official or employee has reason to believe that it is designed to do so, subsection (b) does not apply to:

\* \* \*

(4) Reasonable expenses for food, travel, lodging and scheduled entertainment of the official or employee for a meeting which is given in return for participation in a panel or speaking engagement at the meeting;

\* \* \*

(8) Honorariums or awards for professional achievement.<sup>27</sup>

This Act also contained an express legislative intent that its "provisions in all respects be consistent with, and no less stringent than, the standards and requirements of the Maryland public ethics law..."<sup>28</sup>

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<sup>27</sup> 1983 L.M.C., ch. 1, §1, codified at MONT. CO. CODE (1984) §§ 19A-11 and 19A-9.

<sup>28</sup> MONT. CO. CODE (1984) § 19A-2.

The context of the 1983 County Ethics law teaches, therefore, that, like its State model, the honorarium exception to its gift-acceptance prohibition did not permit the acceptance of an "honorarium" for services rendered, and its prestige-of-office prohibition forbade a public employee from accepting, for his or her own private gain or that of another, a fee-honorarium for a speech or presentation concerning the exercise of his or her county activities.

*The 1989 State "Honoraria" Legislation.*

Although the General Assembly amended the State Ethics law regarding honoraria in 1989,<sup>29</sup> the State Ethics Commission has viewed that enactment as imposing additional, not less, restrictions on the receipt of honoraria by certain officials, and has not altered its view of the narrow honorarium-gift-prohibition exception for state employees:

The State Ethics Commission has considered [the] issue [of acceptance of honoraria by state officials and employees] in several advisory opinions, generally advising that such payments must be treated not as honoraria but as payments for services rendered (employment). They have been allowed or disallowed based on the application of the outside employment and prestige of office provisions in [other] sections ... of the [State] Ethics Law.... Acceptance of these fees has not been allowed when the outside activity resulted directly and immediately from the officials' State position.

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It is the Commission's view that this approach, which it has followed in many years of implementing the Ethics Law, was not altered by amendments made by the Legislature to the gift provisions of the Law ... in the 1989 Session. These amendments were, in our view, plainly designed to significantly restrict the ability of State employees and officials to engage in compensated speaking and writing engagements activities that in any way relate to their official responsibilities for the State.<sup>30</sup>

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<sup>29</sup> LAWS OF MD., ch. 804 (H.B. 662) (codified at then MD. ANN. CODE, art. 40A, § 3-106(c), now MD. CODE ANN., STATE GOV'T §15-505(d)).

<sup>30</sup> 10/20/95, letter from State Ethics Commission Staff Counsel Hahn. *See also* 2/12/90 letter from General Counsel Speck ("At its meeting on January 11, 1990, the State Ethics Commission informally reviewed [a] request for advice regarding application of the Ethics law to acceptance of honoraria [and concluded that its prior advice] was not altered by amendments made by the Legislature to the gift provisions of the Law in the 1989 Session"); 8/30/89 letter of Exec. Dir. O'Donnell ("Although the amended provisions

Indeed, as a result of the 1989 legislation, the State Ethics law now expressly prohibits a State official of the Legislative Branch from accepting any honorarium,<sup>31</sup> and other public officials and employees from accepting an honorarium if:

- (i) the payor of the honorarium has an interest that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the individual's official duty; and
- (ii) the offering of the honorarium is in any way related to the individual's official position.<sup>32</sup>

### *The 1990 County Ethics Law Revision.*

The County Ethics law was generally revised, rewritten, and renumbered in 1990.<sup>33</sup> However, the prestige-of-office prohibition was retained without any change in substance, and the expense-reimbursement and honoraria exceptions to the gifts-acceptance prohibition were not materially changed in substance.<sup>34</sup> Neither has any subsequent County legislation changed the substance of those particular provisions.

### *The 1995 Recodification of the State Ethics Law.*

In 1995, as part of the continuing recodification of the State Code, the State Ethics law was revised, without substantive change, and recodified as Title 15 of the State Government Article of the Maryland Code.<sup>35</sup>

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allow some exceptions for college faculty and reimbursement for certain expenses, it is the Commission's view that the clear intent of the Legislature was to eliminate the acceptance of honoraria and speaking fees for all officials, to the extent that the payments are in any way related to the individual's official activities").

<sup>31</sup> MD. CODE ANN., STATE GOV'T § 15-505(d)(1).

<sup>32</sup> § 15-505(d)(3).

<sup>33</sup> 1990 LMC, ch. 21 (Bill No. 33-89), effective April 26, 1990.

<sup>34</sup> The only change in substance in the gifts-acceptance prohibition was the repeal of the introductory qualification of the exceptions. The pre-1990 law permitted the acceptance of a gift listed in one of the exceptions unless the gift "would tend to impair the impartiality and the independence of judgment of the official or employee, would give the appearance of doing so, or the recipient official or employee ha[d] reason to believe that it [was] designed to do so...." The 1990 legislation repealed that qualify language.

<sup>35</sup> LAWS OF MD. (1995), ch. 533.

## CONCLUSION

We conclude, therefore, that the pertinent provisions of Montgomery County's current gift-acceptance and prestige-of-office prohibitions should be construed the same as their 1983 predecessors, which clearly were intended to be the same as their 1979 State Ethics law models, as construed by the State Ethics Commission. Consequently, as at the State level, so, too, in the current County Ethics law, the term "honoraria," as used in the gift-acceptance prohibition, does not permit a public employee to accept an honorarium for speaking at a meeting or participating in a panel if the subject of his or her presentation or participation is directly and immediately related to the employee's governmental activities. However, a county employee may accept reimbursement for reasonable expenses of the kind listed in the Ethics law when incurred in connection with the employee's participation in a panel or speaking at a meeting, even if the subject directly and immediately relates to employee's governmental activities.<sup>36</sup>

In closing, we note that the County Ethics law authorizes the Ethics Commission, upon written request, to waive these prohibitions if the Commission finds that:

- (1) the best interests of the County would be served by granting the waiver;
- (2) the importance to the County of a public employee or class of employees performing official duties outweighs the actual or potential harm of any conflict of interest; and
- (3) granting the waiver will not give a public employee or class of employees an unfair economic advantage over other public employees or members of the

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<sup>36</sup> The Anne Arundel County Ethics Commission also has recognized and applied this rationale. IO-00-103 (July 12, 2000)(quoting COMAR, 19A, Op. 83-11)(A gratuity from a marketing company to government employees for participating in a marketing survey "is not a gift under § 3-106 of the [Anne Arundel County] Public Ethics Law, but is in fact, a fee for services rendered. Section 3-104(a) prohibits an employee from using the prestige, authority, or title of the office or position for the employee's gain or for the gain of another. A fee or honorarium would benefit the employee, and a donation to charity would benefit another. The use of the prestige of office involves the fact that the employee's participation was requested because of his county employment. Although the employee did not seek out this opportunity, the offer was extended to him directly because of his county position. For this reason the employee may not accept either a direct gratuity or a donation to charity. This opinion is supported by opinions of the state ethics commission, which has consistently advised that a fee offered for a lecture by a state employee would be prohibited by the prestige of office provision of the ethics law, 'if the activity flowed directly and immediately from the individual's state duties'.... Participation in a marketing research is a similar type of service").

public.<sup>37</sup>

Of course, when granting such a waiver the Commission may impose conditions appropriate to fulfilling the purposes of the Ethics law,<sup>38</sup> including the usual reminder that the Ethics law prohibits a public employee from disclosing confidential information relating to or maintained by a County agency that is not available to the public.

We trust this opinion is fully responsive to your inquiry and of assistance.

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<sup>37</sup> MONT. CO. CODE § 19A-8(a).

<sup>38</sup> § 19A-8(e).



A:\Honoraria Co. Atty. op.wpd