CITY OF COLLEGE PARK ETHICS COMMISSION
ADVISORY OPINION 2013-01

February 28, 2013

Jack Robson, the Chief of the City of College Park Board of Election Supervisors, has asked the Ethics Commission for an advisory opinion regarding whether incumbent candidates for office may distribute their City-supplied business cards with their campaign literature.

Mr. Robson states that he has previously advised candidates that he believes that the mass distribution of official business cards with an incumbent candidate's campaign literature that is left at a resident's household would constitute an unauthorized use of City property for private purposes and the use of the prestige of public office for private gain in violation of the Ethics Chapter.

Mr. Robson further states that he has advised candidates that he believes that an incumbent candidate would not violate the Ethics Chapter by leaving a business card with a constituent if, during a campaign visit or appearance, the candidate discussed City business with the constituent or received a request for constituent services and provided the constituent with a business card to facilitate further communication relating to the matter of City business or request for service.

Applicable Law

The following provisions of the Ethics Chapter are pertinent to Mr. Robson's inquiry:

§ 38-11. Conflicts of interest.

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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.

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§ 38-13. Unauthorized use of City property.

No City official or employee shall permit or facilitate the unauthorized use of city-owned facilities, vehicles, equipment, materials or personnel for private purposes or profit.

Discussion

Unauthorized Use of City Property

The Commission agrees with Mr. Robson's opinion that the mass distribution of incumbent candidates' official City-provided business cards in connection with campaign activity constitutes the use of City-owned materials in violation of section 38-13 of the Ethics Chapter.

Although the Ethics Commission is not aware of any judicial or State Ethics Commission opinions that address this issue under Maryland law, the General Assembly of Maryland's Joint Committee on Legislative Ethics, in its 2013 *Ethics Guide*, advises Maryland legislators that political campaign efforts do not constitute government business or constituent services and that legislators must not use government resources, including government-provided stationery, for campaign-related correspondence. The Joint Committee further cautions legislators not to utilize government resources for "overtly partisan" communications, even if the communications do not relate to an election campaign. In addition, the Joint Committee prohibits state legislators from including their personal web site addresses on their official business card if the personal web site includes campaign-related or overtly political material.

The Commission finds the reasoning of the Joint Committee on Legislative Ethics to be persuasive, and applying that reasoning to the City-issued business cards of Councilmembers, we conclude that campaigning for election constitutes a private purpose and, therefore, that distributing City-issued business cards for campaign purposes constitutes a violation of section 38-13 of the Ethics Chapter. Specifically, it is the opinion of the Commission that the mass distribution, by mail or hand-delivery, of an incumbent candidate's official business cards with campaign materials constitutes an unauthorized use of City materials for a private purpose.

The Commission disagrees with Mr. Robson's opinion that the distribution of a business card by an incumbent candidate to a specific constituent following the discussion of City business or a request for constituent services during a campaign appearance or visit is permissible under the Ethics Chapter.

Again, the Commission is not aware of any judicial or State Ethics Commission opinions that address this issue under Maryland law. The Joint Committee on Legislative Ethics advised state legislators that the use of state-provided stationery for customary constituent services and to correspond regarding legislative business is permissible. However, we do not find the Committee's analysis to be applicable to the issue of the distribution of official business cards while a candidate is engaged in campaign activity. The primary purpose of official stationery is to facilitate written communication from a candidate's office to the recipient. In contrast, the primary purpose of official business cards is to facilitate further communications between an official and a constituent following a face-to-face interaction. When the face-to-face interaction between a candidate and a constituent occurs while the candidate is canvassing for votes or making a campaign appearance, the distribution of an official business card during that interaction is an inseparable part of the candidate's campaign activity. Accordingly, it is the

opinion of the Commission that section 38-13 prohibits candidates from giving their City-issued business card to constituents during campaign activities such as canvassing and public appearances.

The Commission understands that discussing City business and constituent services with constituents is part of the official duties of City Councilmembers, regardless of whether the Councilmember is actively engaged in electoral campaigning. However, the Commission notes that incumbent candidates have alternative methods of facilitating further communications with constituents about City business that do not involve the use of City-provided materials, such as distributing personal business cards or taking the constituent's card or noting the constituent's contact information and following up with a call, letter, or email.

Use of Prestige of Office

Because we conclude that the mass distribution of City-provided business cards with campaign materials and the distribution of City-provided business cards during campaign appearances and electoral canvassing is prohibited by section 38-13, we do not reach the issue of whether such conduct constitutes the use of the prestige of office for private gain.

Conclusion

For the foregoing reasons, it is the opinion of the Ethics Commission that incumbent candidates for City office must not distribute their official, City-provided business cards in connection with mass distributions of campaign materials or during campaign activities such as door-to-door canvassing or public campaign appearances.

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