

## **Baltimore County Ethics Commission**

### **Advisory Opinion 24-006**

The Baltimore County Ethics Commission (“Commission”) issues this Advisory Opinion in response to an inquiry from the Fair Election Fund (“FEF”) Commission. Specifically, the FEF commissioners want to know if they are permitted to donate personally to candidates for Baltimore County Council and Baltimore County Executive who are registered with the Fair Election Fund. For the reasons set forth below, the Commission finds that FEFC members can make monetary and non-monetary donations<sup>1</sup> to campaigns of Baltimore County candidates participating in the Fair Election Fund.

#### **Background**

The Campaign Reform Act of 2013, Maryland Election Law 13-505, allows any Maryland county that so chooses to create a Fair Election Fund. This fund was intended to be a public financing mechanism for local candidates who agree to participate in the program and abide by its requirements. Baltimore County passed its local version of this statute on December 28, 2021, in which it charged the county’s Director of the Office of Budget and Finance, or his designee, with administering the program in cooperation with the State Board of Elections. Pursuant to section 3-3-2502 of the Baltimore County Code, there are nine members of the Fair Election Fund: one resident of each councilmanic district is nominated, and two at-large county residents are nominated by the County Executive. The County Council must then confirm each nominee.

Candidates for County Council or County Executive must apply to the State Board of Elections to participate in the FEF and the State Board of Elections will then notify the Baltimore County Director of the Office of Budget and Finance if the candidate is certified to participate in the program. In exchange for receiving public matching funds for their campaigns, the local candidates agree to receive individual contributions of no more than \$250. See section 8-2-103(B)(1). The matching funds are calculated according to a formula set forth in section 8-2-106. The candidate must have collected a minimum number of voluntary contributions in order to qualify for the matching funds. See 8-2-104(B). The FEF Commission is responsible for calculating the amount necessary to fully fund the Fair Election Fund’s pool of matching dollars for the upcoming fiscal year and recommend that amount to the County Executive for inclusion in the annual budget. The FEF commission also is charged with conducting outreach to promote participation in and awareness of the fund. See Section 3-3-2504.

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<sup>1</sup> As the Baltimore City Ethics Board noted in Advisory Opinion 24-001, “[p]olitical contributions or ‘independent expenditures’, i.e., lawful monetary or in-kind donations to a candidate or political campaign by a qualifying natural or legal person, have long been considered political speech protected by the First Amendment.” See *Buckley vs. Valeo* 424 U.S. 1, at 46... Any limitation on a Commissioner’s right to freely exercise constitutionally protected political speech (including making independent expenditures) by the Ethics Law would likely be unconstitutional under *Buckley* and progeny.”

## Analysis

As individuals “elected or appointed to serve on any county board, agency, commission, or similar entity” members of the FEF commission are considered public officials who are subject to the Baltimore County Ethics code.

Section 7-1-301 prohibits a public official, such as an FEF commission member, from participating in a matter if that official or a qualified relative “has an interest in the matter and the public official knows of the interest.” An interest is defined in 7-1-101(m), subject to certain exceptions, as a “legal or equitable interest, whether or not subject to an encumbrance or a condition, which is owned or held by a person subject to this title in any way, in whole or in part, jointly or severally, directly or indirectly.” Simply stated, an individual campaign contribution by an FEF commissioner to a candidate for local office who is enrolled in the FEF program does not give the commissioner a legal or equitable interest in the campaign of the candidate. We agree with the reasoning of the Baltimore City Ethics Commission in its Advisory Opinion issued on February 29, 2024. To the extent that a candidate, chair, or treasurer of an open campaign account can be said to have an underlying “interest” in a candidate’s campaign, these people are expressly excluded from serving as FEF commission members. Therefore, we conclude that because there is no interest in the candidate’s campaign, the Ethics code does not prohibit FEF commission members from making contributions to FEF-enrolled local candidates.

We also agree with Baltimore City’s reasoning that an employee of an FEF-funded campaign, as opposed to a donor, would not be able to serve as an FEF commissioner. As section 7-1-302 of the Baltimore County code states:

### **§7-1-302 – RESTRICTIONS ON EMPLOYMENT, FINANCIAL INTERESTS, AND AFFILIATIONS.**

- (a) *In general.* Except as provided in subsections (b) and (c) of this section, a public official may not:
  - (1) Be employed by or have a financial interest in:
    - (i) An entity subject to the authority of that public official or of the agency, board or commission with which the public official is affiliated; or
    - (ii) An entity that is negotiating or has entered a contract with the agency, board or commission with which the public official is affiliated or an entity that is a subcontractor or a contract with the agency, board or commission;
  - (2) Hold any other employment relationship if that employment relationship would impair the impartiality and independent judgment of the public official; or

- (3) Be employed by, have a financial interest in, or be affiliated with a private entity that is established or created by the county for the purpose of receiving public funds.

(b) *Exceptions.* He prohibitions of subsection (a) of this section do not apply:

- (1) To employment or a financial interest allowed by regulation of the Ethics Commission if:
  - (i) The employment does not create a conflict of interest or the appearance of a conflict of interest; or
  - (ii) The financial interest is disclosed;
- (2) To a public official who is appointed to a regulatory or licensing unit pursuant to a statutory requirement that entities subject to the jurisdiction of the unit be represented in appointments to it; or
- (3) As allowed by regulations adopted by the Commission, to a public official whose government duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest.

(c) *Same – Extraordinary situations.*

- (1) Subject to paragraph (2) of this subsection, the Ethics Commission may exempt a public official of the administrative services of county government from the prohibitions of subsection (a) of this section. If the Commission determines that:
  - (i) Failure to grant the exemption would limit the ability of the county to:
    1. Recruit and hire highly qualified or uniquely qualified professionals for public service; or
    2. Assure the availability of competent services to the public; and
  - (ii) The number of exemptions granted under this subsection has not tended to erode the purposes of subsection (b) of this section or other provisions of this title.
- (2) (i) The Ethics Commission may grant an exemption under paragraph (1) of this subsection only:
  1. in extraordinary situations; and

2. Upon recommendation of the County Executive at the request of the agency involved.
  - (ii) The Ethics Commission shall apply this subsection as consistently as possible under similar facts and circumstances.

As the Baltimore City Ethics Commission reasoned when it was faced with the same issue, “[w]hile contributions by the individual FEF commissioner to the campaign are protected political speech,” and do not create an economic interest in the campaign entity . . . the Commission could be seen as having an ‘approval’ role in disbursing funds . . . such that a Commissioner’s employment by a campaign violates [section 7-1-302].” Baltimore City Board of Ethics Advisory Opinion 24-001 Therefore, the Commission concludes that if a Commissioner were to accept paid employment by a campaign receiving FEF funds, that employment would constitute a “financial” interest and violate the provisions of 7-1-302. Furthermore, no compelling reason has been offered as to why there should be an exception granted to this prohibition on employees of an FEF-funded campaign from serving as FEF Commissioners.

Finally, the Commission agrees with analysis of the Baltimore City Ethics Commission used in analyzing its nearly identical provision of Baltimore County’s section 7-1-306, Use of Prestige of Office. According to that provision, “[a] public official may not intentionally use the prestige of office for that public official’s private gain or that or another.” This Commission finds, as the Baltimore City Board of Ethics did, that “[c]ommissioners who make a *private* campaign contribution are not using their ‘official position’ for anyone’s private gain (even if a contribution results in a *de facto* ‘gain’ for the State-regulated campaign entity.) Also, as discussed above, a Commissioner’s private contribution does not create a cognizable interest in that campaign entity for purposes of the Ethics Law.” Therefore, the Commission concludes that a lawful campaign contribution does not amount to a Use of Prestige of Office violation.

### **Summary**

In closing, the Commission concludes that a campaign contribution to an FEF-funded campaign does not constitute a violation of the Baltimore County Ethics Code, but employment by an FEF-funded campaign would in fact violate the Ethics Code. The Commission further concludes that a donation by an FEF commissioner to an FEF-funded campaign does not violate section 7-1-306 of the Ethics Code.

/s/ Mande Heinl  
Mande Heinl, Commissioner

9/3/2024  
Date

/s/ Laura E. Ray  
Laura Ray, Commissioner

9/3/2024  
Date

/s/ Kevin Murphy  
Kevin Murphy, Commissioner

9/3/2024  
Date

/s/ Sasha Rousseau  
Sasha Rousseau, Commissioner

9/3/2024  
Date

/s/ Hunter Piel  
Hunter Piel, Commissioner

9/3/2024  
Date