



CHARLES COUNTY ETHICS COMMISSION

Advisory Opinion 20-02

DATE: December 15, 2020

OPINION REQUESTED:

I am seeking a determination to whether it is ethically permissible for me as a County Commissioner and restaurant owner to accept the CARES ACT Restaurant Grant Relief Funds from the State but administered by Charles County?

OPINION OF THE ETHICS COMMISSION:

On November 18, 2020, the above request for opinion was forwarded to the Charles County Ethics Commission for a determination under Sections 170-1 – 170-11, collectively known as the Charles County Code of Ethics.

A Charles County Commissioner, or their immediate family member, has a financial interest in a local restaurant that would otherwise be eligible for the CARES ACT Restaurant Grant Relief Funds that are being administered by the Charles County Economic Development Department and they have sought an advisory opinion under Charles County Code of Ethics, Section 170-1, et. seq. asking the Commission to determine whether it is ethical for their company to apply for and accept the Funds.

Pursuant to Section 170-4 (J) Advisory Opinions, of the Charles County Ethics Code, The Commission is granted the authority to render this opinion. That Section mandates that "any person subject to this chapter may request an advisory opinion from the Commission concerning the application of this chapter" and that "the Commission...shall provide interpretations of this chapter based on the facts provided or reasonably available to the Commission within 60 days." There is no dispute that an elected County Commissioner is subject to the Charles County Code of Ethics, and, therefore, may properly request an advisory opinion under this section.

On Tuesday, November 24, 2020, the Ethics Commission convened virtually via Teams video conference to consider this question. The Commission received evidence from Mr. Darrell Brown, Director of Economic Development, which included the grant administration process as well as the Restaurant Grant Application and was provided legal analysis by its counsel, Mr. Wes Adams, County Attorney for Charles County.

Section 170-5 of the Charles County Code, Code of Ethics, governs specific prohibitions of conduct and conflicts of interest and generally prohibits both actual and appearance of conflicts for an official (and covered family members). In particular, subsection (a) prohibits an official from participating in "the disposition or decision" of a matter in which the "official or a qualified relative of the official has an interest. Similarly, subsection (b) prohibits substantive decision making regarding the official in their official government capacity and businesses in which they

possess a financial interest. *See, Charles County Code, Code of Ethics, Sec. 170-5(b).*

With respect to the Restaurant Grant Relief Funds, the Commission was made aware that these funds originate from the Federal Government to the State and are passed down to each of the Counties to perform the administrative function of dispersing the monies to all eligible business. Mr. Brown's description of the process stated:

"Beyond determining that all applications received by the department are complete, and that each application satisfies the "eligibility grant requirements," certify use of funds, sign and certify the Disclosure and Certification form, the department's independent Grant Review Committee (GRC) does not exercise any further discretion under this program.

The EDD is acting as a pass through for the CCRRGP.

Specifically, the EDD's responsibility is to ensure that the purpose of the grant funds awarded to Charles County government by the Maryland Department of Commerce will be "to make grants to restaurants within Grantee's jurisdiction to promote and encourage stabilization within the hospitality and restaurant industry..." and to comply with terms, certifications, representations, and covenants for those determined to be eligible for funding. "

There is major exception, which removes, *de facto* any actual or implied conflict and permits the Commissioner to render an opinion under subsections A(1) & (3) of Sec. 170-5 ("Except as permitted by Commission regulation or *opinion*..."). That exception states: "Except in the exercise of an *administrative or ministerial* duty that *does not affect* the disposition or decision with respect to any matter..." the following activities would otherwise be prohibited.

Based on a review of the evidence in this matter and the process by which Restaurant Grant Relief Funds are originated, obtained and dispersed, it is clear that the Commissioner role in that process, if any, can only be characterized as administrative or ministerial. In fact, it is clear that the Board of County Commissioners have no role in any factor which could be seen as an improper influence over this relationship – a business either qualifies under the State guidelines for the relief and therefore they can receive the money or they don't. It is clear that the Charles County Economic Development Department is acting in the quintessential administrative fashion in dispersing the Grant Funds to all eligible restaurants.

With respect to any appearance of conflict, while an argument could be advanced that because the Commissioners exercise control over the Economic Development Department that they could somehow steer funds to themselves in inapplicable here. Funds are dispersed to and on the basis of the following example of check-boxes: business in good standing, that is a restaurant, with a certain number of employees, that are not in default to the County on any other loan, etc. There is no steering or weighting or decision making with respect to these boxes, moreover, there is no way, absent outright fraud, that any Commissioner can affect the decision to disperse. Either the Restaurant meets the required check-boxes or it does not.

It is clear to the Commission that this process removes any possible taint of unfair influence that could be created because of a Commissioner's ownership interest in the restaurant receiving the

Federal/State originated grant funding. Therefore, the Commission finds that any "appearance of conflict" would not apply based on the facts and evidence placed before the Commission.

Therefore, the Commission finds, in response to the Board of County Commissioner's question, that it would not be a conflict of interest or a violation of the Charles County Code of Ethics, for the company in which the Commissioner has an ownership interest to apply for and receive CARES ACT Restaurant Grant Relief Funds administered by the Charles County Government through the Economic Development Department for the State of Maryland.

APPROVED THIS 15th day of December 2020.

ETHICS COMMISSION OF
CHARLES COUNTY, MARYLAND

/s/
Henry A. Collins, Jr., Chairman

/s/
Stephen P. Fitzgerald, Esq., Vice Chairman

/s/
Natalie Cotton, Commission Member

/s/
Lisa Elliott, Commission Member

/s/
Ralph Patterson, Commission Member