

PUBLIC ETHICS

PUBLIC INFORMATION ACT—LOCAL GOVERNMENTS—ALL INFORMATION ON CALVERT COUNTY FINANCIAL DISCLOSURE FORM IS TO BE AVAILABLE TO THE PUBLIC.

December 22, 1986

Ms. Shirley McCarthy, Chairman
Calvert County Ethics Commission

You have requested our opinion on whether certain information on disclosure statements filed with the Calvert County Ethics Commission must be withheld from public disclosure. For the reasons given below, we conclude that all of the information on those statements must be made available to the public.

I

Conflict of Interests
and Financial Disclosure Provisions

The Calvert County Ethics Code prohibits County officials and employees from participating in matters that "would, to their knowledge, have a direct financial impact, as distinguished from the public generally, on them, their spouse or dependent child, or a business entity with which they are affiliated." Calvert County Code S.X.C.1.1 The County's ethics ordinance also requires officials, employees, and candidates for elective office to file statements "disclosing any interest or employment the holding of which would require disqualification from participation [in matters involving the

¹Calvert County, like all other local governments in the State, was required to enact "conflict of interest provisions applicable to [its] local officials...." Article 40A, §6-101(a) of the Maryland Code.

The ordinance's terms prohibit officials and employees from participating "on behalf of Calvert County in any *manner*" that would have such a personal financial impact. The ordinance tracks a model local ethics law adopted by the State Ethics Commission whose comparable provision prohibits participation "in any *matter*" that would involve such a conflict of interest. COMAR 19A.04 Apx. B. We assume, therefore, that the word "manner" in the Calvert County provision should be read as "matter."

County], sufficiently in advance of any anticipated action to allow disclosure to the public." Calvert County Code S.X.D.4.² Officials and employees must also file annual statements disclosing the receipt of any gift exceeding \$25 in value from any person who has a contract with Calvert County or who is regulated by the agency of which the declarant is a member. Calvert County Code S.X.D.1.

The County Ethics Commission has devised a standard form for the disclosure statements, which it requires be submitted annually. The form identifies the declarant by name, address, and office. It requires disclosure of any gift having a value greater than \$25 received from a person doing business with or regulated by the County or from a lobbyist, and it asks whether the declarant has participated in a County matter that had a direct financial impact on the declarant, the declarant's spouse or dependent children, or affiliated business entities. In addition, the form requires the declarant to disclose certain specified interests or employments: (i) the employment of a family member with the County, (ii) interests in real property in the County other than the declarant's residence, (iii) any representation of a party before a County body for a contingent fee, and (iv) any interest or employment of the declarant or a family member in a business entity doing business with the County.

II

Confidentiality and Public Disclosure Provisions

Section 10-617 of the State Government Article ("SG" Article) provides that, "[u]nless otherwise provided by law," certain information in public records must be withheld from public inspection. SG §10-617(a). Home addresses and telephone numbers of State and local employees are made ordinarily nondisclosable by SG §10-617(e). "[I]nformation about the finances of an individual, including assets, income, liabilities, net worth, bank balances, financial history or activities, or credit worthiness," is made ordinarily nondisclosable by SG §10-617(f). You have suggested that those provi-

²The filing requirement applies to the Board of County Commissioners, the County Attorney, the Administrative Director, Merit System and contractual employees, and the members of the Planning Commission, the Industrial Park Authority, the Marine Museum Board of Governors, the Housing Authority, the Board of Zoning Appeals, the Building Board, the Plumbing Board, the Electrical Board, and the Liquor Board. Calvert County Code S.X.D.3.

sions require you to redact the home address and financial information from a disclosure statement before releasing it to the public.

However, §X.D.5. of the County ordinance unambiguously requires that "[d]isclosure statements filed pursuant to this section [§X.D.] shall be maintained by the Commission as public records available for public inspection and copying."³ That provision, in accordance with SG §10-617(a), thus supersedes the usual confidentiality of information that is filed "pursuant to" the financial disclosure provisions of the ordinance. Hence, if the information required by the Calvert County disclosure form is within the ambit of §X.D., all information on the form must be disclosed.⁴

III

Scope of Financial Disclosure Requirement

The Calvert County financial disclosure requirement, like all such requirements of both State and local law, is designed to guard against improper influence on the conduct of public business by requiring governmental officials and employees to make public disclosure of their financial affairs. Article 40A, §1-102(c) of the Maryland Code. Such laws, accordingly, "are concerned not just with actual conflicts of financial interest, but also with appearances." *Montgomery County v. Walsh*, 274 Md. 502, 514 (1975). To effectuate the legislative intent to assure the public of the impartiality and independent judgment of governmental officials, such a provision must be liberally construed. Article 40A, §1-102(d); 66 *Opinions of the Attorney General* 197, 203 (1981).

The statement required by Calvert County Code §X.D.4 is one "disclosing any interest or employment the holding of which would

³Moreover, the State Ethics Commission—which is charged with ensuring that local ethic laws comport with the requirements of the State Public Ethics Law—has expressly stated that "[t]he local law, to be consistent with the Public Ethics Law should provide that financial disclosure statements be held by the [local agency administering the ordinance] as public records available for public inspection and copying." COMAR 19A.04.02.05.

⁴In any case, the current practice is unacceptable. If any information on the disclosure form is not within the ambit of §X.D and therefore is not disclosable to the public, the County Ethics Commission has no authority to require the information's inclusion on the financial disclosure statement. If, however, the required information is within the ambit of §X.D., it is disclosable in its entirety.

require disqualification from participation" in County actions. Thus, by the terms of that provision, a declarant must disclose *any* interest or employment by reason of which County actions would directly affect the declarant's personal finances. The specific interests and employments designated on the County's disclosure form all are clearly of that sort, for all of them pertain to assets or sources of income whose value may be wholly or partially determined by particular County actions. Therefore, in our view, the ordinance's language on its face is broad enough to encompass all of the inquiries on the form.

Moreover, we think that the very content of the disclosure statement indicates that the County Ethics Commission itself regards all of the required information as being within the contemplation of the ethics ordinance's disclosure requirements. The Commission is charged by §X.B with administering and interpreting the ordinance. Hence, the inclusion of this information on the form, which was devised by the Commission for the very purpose of administering the disclosure requirement, is strongly persuasive evidence that disclosure of the information is within the ambit of §X.D.4. See *National Asphalt Pavement Ass'n v. Prince George's County*, 292 Md. 75, 80 (1981).

The disclosure required by the County's disclosure statement form is undeniably more detailed than the minimum that State law requires. See Article 40A, §6-201(c). However, State law by no means prevents counties from adopting broader or more detailed disclosure requirements. *Montgomery County v. Walsh*, 274 Md. at 510. In fact, the State Ethics Commission's regulations, in addition to setting forth the minimum disclosure required, also discuss more detailed disclosure approaches that would be consistent with the principles of the State Public Ethics Law.

Calvert County's requirements, as embodied in the local Commission's form, are patterned on the disclosure approaches discussed in those regulations and reflect the State disclosure approach. COMAR 19A.04.02.05.B. As such, they represent a permissible determination by the agency charged with administering the County's ethics ordinance as to the level of detail necessary to meet the ordinance's requirement that County officials and employees disclose "any interest or employment the holding of which would require disqualification" from acting on behalf of the County. Such an administrative construction of the ordinance "should not be disregarded except for the strongest and most cogent reasons."⁵ *Memory Brothers, Inc. v. Bd. of Public Works*, 273 Md. 320, 3.

(1974) (quoting *Comptroller v. Rockhill, Inc.*, 205 Md. 226, 283 (1954)).

Further, that construction of the ordinance's filing requirement comports well with the requirement's purpose. Financial disclosure requirements in general "seek[] to foster a climate of honesty perceptible by the public at large." *Montgomery County v. Walsh*, 274 Md. at 514. Disclosure is designed to ensure that "public officials and employees act with honesty, integrity, and impartiality in all their dealings, and that their private financial holdings and transactions present no conflict of interest between the public trust and private interests." 274 Md. at 515. Accordingly, disclosure may certainly go beyond merely asking declarants whether they or their families have financial interests that would require disqualification. "[T]o limit disclosure requirements to financial information that on its face relates to County activities or to the functions and duties of a particular official or employee would not guarantee the absence of financial conflicts of interests." 274 Md. at 517.⁵ Because the purpose of the ordinance's disclosure requirement is to assure the public that no such conflicts exist, we think that the requirement does encompass disclosure of all of the interests and transactions identified on the form.

IV

Conclusion

In summary, it is our opinion that all of the information on the Calvert County financial disclosure form is within the ambit of the County Ethics Ordinance's disclosure provision. Accordingly, disclosure statements filed with the County Ethics Commission are filed "pursuant to" the financial disclosure section of the ordinance and must be "maintained by the Commission as public records available for public inspection and copying" in their entirety, as required by Calvert County Code SX.D.5.

STEPHEN H. SACHS
Attorney General
 C.J. MESSERSCHMIDT
Assistant Attorney General
 JACK SCHWARTZ
Chief Counsel
Opinions and Advice

⁵Indeed, courts in other jurisdictions have pointed out that "[i]t would be an anomaly to enact a statute, designed to eliminate conflicts of interest between public trust and private gain, in such manner that the person affected is permitted to decide when a financial interest relates to his public employment." *Stein v. Howlett*, 289 N.E.2d 409, 413 (Ill. 1972), *appeal dismissed*, 412 U.S. 925 (1973). *Accord, Fritz v. Gordon*, 517 P.2d 911, 926 (Wash.), *appeal dismissed*, 417 U.S. 902 (1974).