

**ETHICS COMMISSION
TOWN OF CHEVY CHASE, MD**

December 7, 2015

State Ethics Commission
45 Calvert St., 3rd floor
Annapolis, MD 21401

Re: Town of Chevy Chase Ethics Ordinance

To the State Ethics Commission:

This letter is to make clear that in the unanimous opinion of the Ethics Commission of the Town of Chevy Chase, the proposed amendment to the Town's Ethics Ordinance, submitted to the State Commission on October 15 by the Town's Counsel, would not meet the requirements of State law and thus should not be approved by the State Ethics Commission.

However, it is our understanding that the Town Council is submitting an alternative proposed amendment to the State Ethics Commission today. In our view, as explained in this letter, this alternative proposal does meet the requirements of State law and should be approved by the State Ethics Commission.

Background:

On October 1, as required by statute, the Chair of the Town of Chevy Chase Ethics Commission, Barry Hager, submitted a certification letter which noted that in his opinion the current Town ordinance did not meet state requirements, based on the interpretation of the Town ordinance with respect to a write-in candidacy in the May 2015 election for the Town Council.

In that certification letter, the Ethics Commission Chair noted that the Town Council had under consideration changes to the Town Ethics Ordinance which would bring the Town's Ethics Ordinance into compliance with State law. However, the amendment to the Town's Ethics Ordinance which was submitted to the State Commission on October 15 is not the same as the one referenced in that October 1 certification letter.

The Town Council of Chevy Chase on October 15 sent to the State Ethics Commission an amendment which is neither the amendment proposed by a Joint Committee of the Town's Ethics Commission and Election Board nor the amendment that was originally supported by a majority vote of the Town Council at its September meeting. *See the attached report of the Joint Committee entitled "The Election in the Town of Chevy Chase, MD" and dated August 31, 2015.*

The proposed amendment to the Ethics Ordinance of the Town of Chevy Chase which was submitted to the State Ethics Commission on October 15 is instead a proposal approved at the October 14 meeting of the Town Council. This proposed amendment in our view does not meet the standards of State law or comply with the recommendations of the Town Ethics Commission and Election Board, acting as a Joint Committee.

By contrast, the proposed amendment which we understand is being presented to the State Ethics Commission today is the amendment originally approved by the Town Council in September. The Ethics Commission of the Town of Chevy Chase believes that this proposal does meet the standards of State law and therefore should be approved by the State Ethics Commission.

To avoid confusion, the amendment which we believe would comply with State law is attached.

Substance of the Issue:

Maryland State law requires that covered municipalities have an Ethics Ordinance which is at least as stringent as the State Ethics law with respect to conflicts of interest and financial disclosure of both office-holders and candidates for public office. With respect to financial disclosure (as a means of insuring against conflicts of interest), the State statute requires that all candidates for office file a financial disclosure statement prior to the election date, and at the latest by April 30 of the year of the election. *See Maryland Gen. Provisions Title 5, Maryland Public Ethics Law, Sec. 5-605.*

Under State law, while write-in candidacies are allowed, all candidates for public office must file a certificate of candidacy prior to election day. Moreover, the required financial disclosure statement must be filed as a prerequisite for filing the certificate of candidacy. *See Sec. 5-605(f)(1):* “An election board may not accept a certificate of candidacy or certificate of nomination of a candidate covered by this section unless the candidate has filed a statement required by this section...” (*The referenced statement is the Financial Disclosure statement.*)

The public policy reason for this requirement in State law is that there should be an opportunity for the voting public to scrutinize the financial disclosure statements of candidates and assess the possibilities of conflicts of interest prior to the election. Post-hoc assessment of potential financial conflicts does not inform the voting public.

This is where the Town’s proposed amendment submitted to you October 15 falls short of State law. The amendment would allow write-in candidacies to occur on a secret or stealth basis with no prior disclosure of the candidacy and no filing of financial disclosure prior to the election. A write-in candidate could be elected to office with no prior filing of a certificate of candidacy (required under state law) and with no prior filing of a Financial Disclosure statement (also required under State law). The only requirement with respect to a write-in candidate under the Town’s October 15 proposal would be that a successful write-in candidate would be required to submit an after-the-fact Financial Disclosure Statement within 7 days after the election was held.

The underlying purpose of the State Ethics law is to prevent corruption at all levels of government by providing that candidates and incumbents must disclose their personal financial holdings in a timely manner—both before they are elected and as they continue in office—in order to allow the voting public to assess whether they have conflicts of interest. Maryland state law is clear in its requirements in this regard.

The stakes for residents of the Town are considerable. Decisions made by the Town Council affect the quality of their lives, the value of their properties and the well-being of their community. Town law should not allow secret candidates to gain office without affording the voters of the Town an opportunity to be aware of all candidacies and to assess any potential financial conflicts of interest prior to an election.

Beyond that public policy consideration, Maryland law is clear in its requirement that local municipal ethics ordinances be at least as stringent as State law. Given the clear State standard of financial disclosure prior to an election, it is the unanimous view of the Town's Ethics Commission that the proposed amendment placed before you by the Town Council on October 15 does not meet the stringency requirement of state law.

That proposed amendment would allow the election of a candidate for office (Town Council) who had not made any financial disclosure whatsoever, or any declaration of candidacy, prior to the election date. Such an outcome does not meet the standard of disclosure required by State law and would not serve the purpose of preventing corruption which underlies the ethics statute.

As noted in the earlier, October 1, letter from the Town Ethics Commission Chair regarding the required annual certification that the Town Ethics Ordinance meets State law requirements, the current Town Ethics Ordinance, as it has been interpreted, is not in our view in compliance with State Ethics law. Current Town law is therefore in need of amendment. But the amendment submitted to you on October 15 should be rejected as insufficient under State law, for the reasons stated above.

The alternative approach (*attached*) that was originally placed under consideration by the Town Council at its September meeting and is now being submitted to the State Ethics Commission is, in our view, sufficient under State Ethics law. We applaud the decision of the Town Council to return to consideration of that alternative in order to bring the Town Ordinance into compliance with the minimum standards of State law, as is required by the Maryland State Ethics law.

For those reasons, we respectfully urge the State Ethics Commission to approve this latter proposed amendment to the Town Ethics and Election law.

The submission of these views to the State Ethics Commission was approved by a 2-0 record vote of the Town Ethics Commission in an open public meeting on November 23.

Respectfully submitted,

Barry Hager, Chair
Scott Fosler, Commissioner
Town of Chevy Chase Ethics Commission