



Montgomery County Lodge 35, Inc.

18512 Office Park Drive
Montgomery Village, MD 20886

Phone: (301) 948-4286

Fax: (301) 590-0317

October 17, 2012

VIA OVERNIGHT HAND DELIVERY

Emmet C. Davitt
State Prosecutor
Office of the Maryland State Prosecutor
300 East Joppa Road, Suite 410
Towson, MD 21286

Re: Montgomery County's Unauthorized Expenditures of Taxpayer Funds and Use of County Resources for Campaign Advocacy

Dear Mr. Davitt:

Fraternal Order of Police, Montgomery County Lodge 35, Inc. ("FOP35") requests that you investigate and determine whether any laws have been violated by what appears to be unlawful political activity by Montgomery County Government employees working on the job and expenditure of public funds by the Montgomery County Government to engage in one-sided political advocacy for passage of Ballot Question B in the November 6, 2012 general election. The investigation should include all elected and nonelected officials who have authorized these political activities and expenditures.

To date, this one-sided political advocacy has included:

- * advocating "Vote for Question B" on the Montgomery County web site
- * purchasing time on a local radio station to advocate for Question B
- * placing banners advocating "Vote for Question B" on county Ride-On buses
- * placing bumper stickers advocating "Vote for Question B" on county vehicles
- * distributing flyers advocating "Vote for Question B" at County libraries and other county facilities
- * county employees advocating support of Question B at the Montgomery County Democratic Central Committee ballot committee meeting
- * emailing individuals on a county regional service center email list to vote "yes" on Question B
- * county council member's email newsletter urging voters to support Question B

These political activities appear to violate Md. Code Ann., Article 24 § 13-105, which prohibits local government employees from engaging in political activity while on the job during working hours. Since the statute does not expressly define "political activity," the plain,

common sense meaning must be applied under rules of statutory construction. It is a “political activity” when anyone, government official or citizen, attempts to influence voters to cast their ballots in support of one side in a contested election. There is certainly a common sense understanding that government is engaged in political activity when it uses taxpayer funds and on the job employees during working hours to advocate for one side of a contested ballot question.

Question B is about the repeal of a thirty year old Montgomery County ordinance that provides certain collective bargaining rights and procedures for Montgomery County police officers. FOP 35, the certified bargaining representative of Montgomery County police officers, as well as many other Montgomery County, state and national public and private sector labor organizations strongly oppose Question B which, if approved, would repeal the ordinance.

County officials, including elected officials, appear to have expressly authorized and/or encouraged the expenditure of County funds and the use of County resources and employees on the job during working hours to advocate for Question B. Accordingly, we seek your determination as to whether this activity is illegal, and whether any individual should be held legally accountable.

FOP 35 also requests that you determine whether the County’s use of public funds and on the job County employees during working hours to campaign for one side in a contested election violates the Express Powers Act, Md. Ann. Code, Art. 25A § 5. These activities are not among the powers that the Act expressly grants to a home rule county. A county may exercise only the authority with which it has been expressly, or as a reasonable implication, given by law

FOP 35 believes that the County’s one-sided political advocacy urging voters to vote for Question B falls directly within the statutory authority of the Maryland Office of the State Prosecutor to investigate state election law violations and misconduct in office by public officials or employees.

FOP 35 would welcome the chance to discuss this matter with you and requests that you begin an investigation immediately.

Very truly yours,



Jane A. Milne
Secretary

enc.