

"Federation Corner" column
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County ethics law has failed us

by Peggy Dennis
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Two years ago when the Brickyard Road school site issue had come to a head, I pointed out the inaccurate and misleading information contained in Mr. Leggett's letter of November 10, 2009 to the Board of Education (BOE) in which he stated that "the twenty-acre Brickyard School site is largely vacant and underutilized." The truth was that for almost 30 years this land had been organically certified and farmed to raise heritage organic seed stock. This use is unique and irreplaceable, not just to Montgomery County but in the region. These facts should have been evident to Mr. Leggett had he or his staff bothered to do the research and "due diligence" required.

The same letter misrepresented the Executive's intent saying: "I have been encouraged by the partnership formed between the county and MCPS staff in expanding and coordinating after-school programs, especially for those students most at risk." In fact, Mr. Leggett planned to sub-lease the land to Montgomery Soccer, Inc., a private soccer league, for MSI to develop and run for their own profit.

In March, 2012, we received definitive proof of executive overreach and misbehavior. A letter from Park & Planning staff to the director of the County's Department of General Services, David Dise, took him to task for having misrepresented their position on the Brickyard school site in his testimony before the Board of Education (BOE) a year earlier. I discussed this matter with Jeff Brindle, a CPA, with expertise in applying Government Auditing Standards. In general terms, he said a government official's actions should be compared with behavior that a prudent person would consider reasonable and necessary given the facts and circumstances. He added that Dise's misinformation in this matter came very close to abuse of power, but could not be considered fraud because Dise was not giving "sworn testimony".

The simple layman's definition of abuse is "the improper use of power". The County's Inspector General (IG) has a more nuanced definition: "the intentionally wrongful or improper use of county resources that can include the excessive or improper use of one's position, in a manner contrary to its rightful or legally intended use." So, I took the matter up with Edward Blansitt, our own Inspector General. His response was this question: could I show him that a specific rule, regulation or law had been violated? I thought that he would have been in a better position to answer that question than I, but he was not.

Several weeks later I attended a Training Program on the Montgomery County Ethics Law and The Maryland Open Meetings Act – a morning seminar required for those of us lucky enough to serve on a County board, committee or commission including the hundreds who serve as volunteers. I was already aware that our county Board of Education had been found in court to have repeatedly violated the Open Meetings Act in their deliberations on the Brickyard Road school site, and that there had been no sanctions or penalties exacted for these violations. But that is another issue!

The Ethics Law was new to me. Our seminar was conducted by Marc Hansen and Edward Lattner of the Office of the County Attorney. The course outline informed us that the purpose of the Public Ethics Law was to (1) maintain a high degree of trust that public officials will use impartial and independent judgment when conducting public business and (2) guard against improper influence affecting the decision making process of public officials. "Wow," I thought, "public trust is definitely way down and the Executive has certainly been anything but impartial in working to turn the Brickyard Road site over to MSI soccer." It seemed clear to me that the purpose and intent of the Ethics Law was not being upheld. But how about the letter of the law?

Our seminar consisted mainly of hypothetical case studies, almost all having to do with financial improprieties. Only one section of the law seemed applicable to the Brickyard Road case – "IX. Other Regulated Conduct: 19A-14(a) An employee must not use the prestige of the employee's office for private gain or the gain of another." It is certainly the case that the Executive used the prestige of his office to obtain a public asset for the use and benefit of a private entity. It is also true that the Executive gave erroneous information and misrepresented his purpose when requesting the lease of the land from the BOE. It is also undeniably true that the Director of General Services misrepresented the position of the Planning Department before the BOE. But these last two points are irrelevant. Mr. Lattner affirmed to me that "honesty and truthfulness in the conduct of public business are not required by our Ethics Code."

Honesty and truthfulness are values that we, as citizens, hold dear. And we expect our elected and appointed public officials to adhere to them in carrying out our (the public's) business. We are therefore shocked and angered when we learn that one of more of our public servants has played fast and loose with the truth.

I call on the County Council to correct this deficiency in the Ethics Law and add a new provision under the "Other Regulated Conduct" section. It seems that we need a provision that requires public employees to be factually accurate and truthful in both their written and oral presentations. To quote Michelle Obama: "The truth matters and you don't take short cuts and play by your own rules"

The views expressed in this column do not necessarily reflect formal positions adopted by the Federation. To submit an 800 to 1000 word column for consideration, send as an email attachment to montgomerycivic@yahoo.com