



## ETHICS COMMISSION

### ETHICS OPINION

Complainant, David Dan, Smithsburg Town Council

Respondent, Donald Souders, Smithsburg Mayor

David Dan, a Councilman on the Smithsburg Town Council (“Complainant”), filed a complaint with the Ethics Commission (the “Commission”) against Smithsburg’s Town Mayor, Donald Souders (“Respondent”). In his Complaint, Dan alleged that Respondent violated Smithsburg’s Ethics Ordinance by accepting an invitation from Antietam Broadband to attend a Flying Boxcar’s baseball game in Antietam’s suite.

### **Background**

Complainant alleges the following: During a Mayor and Council meeting on April 16, 2024, Comcast discussed entering into a new franchise agreement with the Town of Smithsburg. During the discussion, Mayor Souders mentioned that the town would also be renewing its franchise agreement with Antietam Broadband. He noted that as soon as Antietam learned that Comcast was scheduled to be on the agenda, they requested to be included as well. On May 29, 2024, Mayor Souders shared on Facebook that he and Council Member Fritsch attended a Flying Boxcar game at Meritus Park. He thanked Susan Grimes for the tickets. Susan Grimes shared on Facebook that she was glad to have Mayor Souders and Council Member Fritsch in the Antietam Broadband Suite for the game. According to Complainant, based on Susan Grimes’s Facebook post and the photos, Complainant claims there were only four people present in Antietam’s suite. According to Meritus Park’s website, renting a suite on a Thursday costs \$750 for up to 20 people<sup>1</sup>. Complainant alleges the value of the tickets exceeds the maximum amount allowed by law. Complainant claims each ticket is valued at a minimum of \$37.50 and is more likely closer to \$187.50. Complainant alleges a violation of Section 33-5H(4)(a) of the Smithsburg Ethics Ordinance.

Respondent appeared before the Ethics Commission to respond to Complainant’s

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<sup>1</sup> The documentation attached to the Complaint attributes this cost to the Wade Architecture Suite. No rental information for the Antietam Broadband Suite was provided. The Commission is unaware whether the Antietam Broadband Suite is available to rent.

allegations. Respondent stated the following: He did not solicit the tickets. He received a text message from Susan Grimes<sup>2</sup> inquiring whether he was interested in tickets to the baseball game. Respondent acknowledged Susan to be an employee of Antietam Broadband, but also provided that she is a personal friend whom he has known for many years. He confirmed that when his girlfriend was unable to attend, he asked Councilman Fritsch ("Fritsch") if he wanted to use the extra ticket. Respondent stated he interpreted the offer of tickets as coming from a friend, not an employee of a company doing business with the Town of Smithsburg. He did not tell Fritsch who provided the tickets. Finding out that the "theme" of the day's game was "Education Day," and that students from Old Forge Elementary School would be throwing out the first pitch, reenforced Respondent's belief that his attendance at the game was appropriate, as Mayor of Smithsburg.

Upon Respondent and Fritsch's arrival at Meritus Park, Ms. Grimes walked them up to the Antietam Broadband suite where approximately 25-35 members of the Clear Spring and Williamsport unified bocce ball teams were also in attendance. Respondent confirmed taking a picture with Stryker, the team mascot. Respondent and Fritsch then left the suite and walked around the stadium. They came down to field level to watch the first pitch and then continued to explore the stadium and speak with various individuals and watch the game. Respondent emphasized that beyond the initial visit to the suite, they did not spend their afternoon in the suite, nor did they have any complementary food or beverages. Respondent produced a letter from Antietam Broadband affirming that the value of Respondent's and Fritsch's tickets were valued less than Twenty Dollars (\$20.00) and confirming "Antietam Broadband proudly welcomed 25 students and coaches from the Williamsport and Clear Spring Unified Bocce teams."

Respondent disputes Complainant's characterization that Antietam Broadband was actively engaged in business before the Mayor and Town Council or negotiating with the public body. Respondent asserts that Antietam Broadband has been a party to a franchise agreement with the Mayor and Town Council since 1991. Upon the Town's affirmative vote to enter into the franchise agreement with Comcast, the Town Attorney indicated Antietam Cable's franchise agreement would need to be updated to mirror the Comcast agreement. Respondent provided that neither he nor the Council were involved in the negotiations of either franchise agreement.

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<sup>2</sup> Susan Grimes is identified on her LinkedIn page as the Director of Business Development and Sales for Antietam Broadband.

## Question Presented

Did Mayor Souders violate the Smithsburg Ethics Ordinance?

## Discussion

The Town of Smithsburg has adopted the “Smithsburg Ethics Ordinance” (the “Ordinance”) as Chapter 33 of the Code of the Town of Smithsburg, Maryland. The Ordinance establishes that the Town’s Ethics Commission shall be the Washington County Ethics Commission. *See* Ordinance § 33-3A. The Ordinance makes clear that the Commission shall have the responsibility to “process and make determinations as to complaints filed by any person alleging violations of [the Ordinance].” *Id.* at § 33-3A(2).

Here, Complainant alleges that Respondent violated § 33-5H4(a) of the Ordinance by accepting Antietam’s gift to attend a local baseball game. Section 33-5H(4)(a) provides:

An official or employee may not knowingly accept a gift, directly or indirectly, from a person that the official employee knows or has reason to know: (a) Is doing business with or seeking to do business with the Town office, agency, board, or commission with which the official or employee is affiliated[.]

The Ordinance’s restrictions on accepting gifts, however, are subject to exceptions. Section 33-5H(6) of the Ordinance lists certain gifts which an employee or official may accept. These exceptions include (but are not limited to) meals and beverages consumed in the presence of the donor or sponsoring entity, gifts nominal in value (less than \$20), and tickets to attend charitable, cultural, or political events.

The Commission finds the Respondent’s statements and documentation persuasive in that his attendance at the baseball game, and acceptance of tickets from Susan Grimes, an employee of Antietam Broadband did not constitute an impermissible acceptance of a gift pursuant to § 33-5H(4)(a). Furthermore, the Commission finds that Mayor Souders did not violate the Ordinance by attending the game.

### I. Acceptance of tickets

The Commission does not agree that Antietam Broadband was actively doing business with the Town of Smithsburg, as described in the Complaint. The facts show that the Town of Smithsburg was engaged in discussions with another internet service

provider (Comcast). When it was determined that the Town would enter into a franchise agreement with Comcast to provide service to the Town of Smithsburg, the Town Attorney advised that the franchise agreement with Antietam Broadband would need to be revised to mirror the agreement with Comcast. While the franchise agreements with both Comcast and Antietam Cable had not yet been finalized, Respondent did accept the invitation from Susan Grimes. But given the mere formality in updating the existing franchise agreement with Antietam Cable, the Commission does not find the acceptance of the tickets to violate 33-5H(4)(a).

## II. Value of tickets

The Commission also finds that the value of the tickets did not exceed the twenty dollar (\$20.00) limit required by the Ordinance.

The Commission finds the testimony of Respondent and his documentation persuasive that Respondent did not solicit the tickets from Antietam Broadband. Further, the Commission is persuaded by the testimony and documents that the value of the tickets given to Respondent did not exceed twenty dollars (\$20.00) in value.

Under § 33-5H(6)(c), a gift of nominal value that does not exceed \$20 in cost constitutes a permissible gift. Complainant provided documentation from the website for Meritus Park that renting the Wade Architecture suite for a single Flying Boxcars game costs Seven Hundred Fifty Dollars (\$750.00). Complainant reasons that, if the suite is able to hold twenty people, the per-person ticket cost would equate to Thirty-Seven and 50/100 Dollars (\$37.50). Complainant argues that, because there were fewer than twenty people in the suite for incident in question, the value of the ticket is closer to One Hundred Eighty-Seven and 50/100 Dollars (\$187.50) and thus greatly exceeds the criteria for a nominal gift.

As noted above, Antietam Broadband was also hosting 25 students and coaches of the Williamsport and Clear Spring Unified Bocce Team in its suite on the same day. Coupled with Respondent's testimony that he and Fritsch spent a minor portion of the game in the suite, the Commission declines to impute the value calculated by Complainant to the ticket, based on the rental cost of an entirely different suite. Moreover, the Commission was not presented with evidence showing the actual tickets, or their cost, used by the Respondent and Fritsch. Without more detailed information, and based on the testimony and documents provided, the Commission declines to find that the price of the ticket exceeds twenty dollars (\$20.00).

Though not dispositive to the Commission's findings, the Commission declines to accept Respondent's argument that, in this instance, a local baseball game constitutes a "cultural event," regardless of its location on the "Cultural Trail" and it is beyond peradventure that a local baseball game is neither a charitable nor political event.

### Conclusion

For the foregoing reasons, we conclude that Mayor Souders did not violate the Ordinance.

WASHINGTON COUNTY  
ETHICS COMMISSION



By: Alan Levin, Chair

Issued this 13 day of June, 2025.