



ANNUAL REPORT

1999

MONTGOMERY COUNTY ETHICS COMMISSION

MEMBERS :

KENNETH C. JACKSON, CHAIR

ELIZABETH K. KELLAR

ALASTAIR MCARTHUR

LEE M. PETTY

WALTER A. SCHEIBER

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Dear Fellow Citizens:

The following report is presented to you by the Montgomery County Ethics Commission in compliance with §19A-6(f) of the Montgomery County Code. This section requires the Ethics Commission to publish an annual report summarizing the actions it has taken during the preceding calendar year.

In 1999 the Commission convened eleven meetings to review and consider formal and informal requests for advisory opinions, waivers, approvals for outside employment and complaints. During the year the Commission issued three formal advisory opinions; granted one waiver and denied one; dismissed two complaints based on merit, resolved one complaint by Consent Order, and denied one Order to Deny Motion to dismiss a complaint; responded to two Public Information Requests; reviewed and decided 430 requests for outside employment approval; reviewed and reported on 124 Lobbyists Reports; and processed 1153 Financial Disclosure Statements. The County Council requested and received guidance from the Ethics Commission concerning three topics: a Code of Conduct for county employees, appropriate changes to the Ethics Law regarding domestic partner issues, and ethical considerations regarding potential changes to the County's procurement laws.

As a result of an increased interest in ethics by our County officials, the Commission has received requests for training classes by department heads as well as members of volunteer boards. This interest has encouraged the Commission to request funds in the next fiscal year to develop and provide a formal education program for County officials, employees and volunteers. Additionally, the establishment of a web site will allow the Commission's waivers and opinions to be posted for a wider audience in a more timely manner.

For the past two years, the Commission had publicly expressed its opinion by petitioning the County Council and the Charter Review Commission that County laws did not adequately restrict the political activities of County officials who serve on quasi-judicial boards and commissions. In October, those efforts contributed to the introduction of House Bill 800, "Montgomery County Political Activities, Quasi-Judicial Officers and Employees (MC7-00) by the Office of Intergovernmental Affairs. The bill was introduced into the State Legislature at its last session.

The Commission looks forward to the challenges of the next year and welcomes and encourages all citizens to take advantage of open meetings and public information laws. We invite your participation.

Sincerely

Kenneth C. Jackson, Sr.
Chairman

NOTE: All publications and forms are available in front of the Ethics Commission Office or by requesting to 240-777-6670.

Introduction

Chapter 19A-5, and 19A-6

The Montgomery County Ethics Commission is composed of five members who are appointed by the County Executive and confirmed by the County Council. Each member must reside and be registered to vote in the County. No more than three members may be registered in the same political party.

The Commission is mandated by the County Executive and County Council to:

- (1) act on complaints of violations filed with the Commission;
- (2) respond to waiver requests;
- (3) act on outside employment approval requests;
- (4) render advisory opinions;
- (5) prepare and distribute financial disclosure forms and lobbying disclosure forms; and
- (6) maintain, as official custodian, forms and records filed under the County Public Ethics Law, Chapter 19A of the County Code.

During their terms of office, members must not: (1) hold or be a candidate for any state, County or local elected or appointed office; (2) be an employee of the state; political subdivision of the state; or a public body created by the state or a (4) participate in any state, County, or local political campaign; (5) participate in support of or opposition to any questions placed on the ballot by state, County, or local government, except a question that directly affects the Commission; or (6) be a lobbyist.

Commissioners serve four-year terms. The terms of no more than two members may expire in any one-year. A member serves until a successor is appointed unless the member resigns before the appointment of a successor. A vacancy must be filled on for the remainder of the unexpired term. The Chair is elected annually.

Commission members are Kenneth C. Jackson, Sr. (D), elected chairman in February, 1998 and 1999; Elizabeth K. Kellar (D) appointed in June, 1999; Alastair McArthur, (I); Lee M. Petty (R); and Walter A. Scheiber (D).

In performing its duties, the Commission may: conduct investigations; authorize the issuance of summons and subpoenas, and administer oaths and affirmations; impose sanctions; adopt regulations; extend deadlines for distributing and filing forms; conduct public education and information programs; public opinions; establish procedures; interpret the Ethics law and advise persons on its application; and take all other steps necessary to carry out the purposes of the Ethics Law.

A person affected by a final decision of the Commission on a complaint, request for waiver, or request for other employment approval may ask the Commission for a rehearing or reconsideration. This request must be filed in writing within 30 days after the issuance of the Commission's final decision and stays the time in which an appeal to the Circuit Court may be filed until the Commission takes final action on the request.

A final decision of the Commission on a complaint, request form waiver, or request for approval of "other employment" may be appealed to the Circuit Court under the applicable Maryland Rules of Procedure governing administrative appeals. An appeal does not stay the effect of the Commission's decision unless the Court orders a stay.

The Commission meets monthly, as necessary, to conduct its business. In 1999, the Commission held eleven meetings. Meeting schedules and agendas are posted in front of the Commission's office.

The Commission's meetings, deliberations and decisions are subject to both the Maryland Open Meeting Act and the Montgomery County Public Ethics Law. Meetings are conducted in open session when required by the Open Meetings Act and in closed session when required by the Ethics Law.

In an effort to conduct its business as publicly as possible, the Commission adopted an Open Meetings Policy. (See Appendix E) At the discretion of the Commission, the public may pose questions and offer comments at open sessions. Matters normally discussed in open sessions include revisions or amendments to Commission policies, regulations and the Ethics Law, and other matters not confidential by law.

During closed sessions, the Commission typically reviews and decides requests for opinions, waivers, and other employment approval. The Commission also reviews and acts on complaints regarding possible ethics violations in closed session.

INQUIRIES

In addition to formal communications to the Commission itself, Commission staff receives many informal questions concerning points of law, requests for information and help in completing other employment, financial disclosure and lobbying forms. Informal requests are not documented or included in this report.

ADVISORY OPINIONS

Chapter 19A-7

Advisory opinions are issued by the Ethics Commission pursuant to Section 19A-7 of the Ethics Law. Any person subject to the Ethics Law, the Code of Ethics for members and employees of the County Board of Appeals¹, or the illegal gifts and kickback and public employment provisions of the County Procurement Law² may ask the Commission for an advisory opinion on the meaning or application of those provisions. A supervisor or department head also may request an advisory opinion about the application of any of those laws to the employment-related conduct of any public employee they supervise.

The Commission is required by law to keep the names of the requestor and the subject of an advisory opinion confidential prior to and after the issuance of an opinion, unless the subject of the opinion requests or permits disclosure. In some cases, protecting the identity of the subject is not possible, for example, when the situation described in the opinion is unique, or the media has reported the issues involved. Whenever possible, the Ethics Commission drafts its opinions so that deletions to protect identities are unnecessary. Otherwise, opinions may be published with identifying information redacted. If the Commission finds that the privacy interest of a public employee or other person clearly outweighs the public's need not be informed about Commission actions, the Commission may publish a list of opinions that have not been published with an explanation stating the reason why each was not published.

In 1999, the Commission issued three advisory opinions. (Appendix A)

¹ §2-109 of the Montgomery County Code.

² §§11B-51 and 11-B-52 (a) of the County Code.

COMPLAINTS

CHAPTER 19A-10

Any individual may file a confidential written complaint with the Commission. A complaint must allege facts under oath that would support a reasonable conclusion that a violation occurred. The complaint must be filed within the later of two years after: (1) the alleged violation or (2) the date when the complainant learned of facts that would indicate a violation occurred. Based on the facts provided by the complainant, the Commission may request Commission staff, the County Attorney, special counselor or any other person to conduct an investigation.

If, in the Commission's opinion, the complaint does not allege facts sufficient to state a violation, the Commission may dismiss the complaint. When a complaint is dismissed, the Ethics Law requires that the Commission inform the subject of the complaint that the complaint was filed and dismissed, but prohibits the Commission from disclosing the identity of the complainant.

If, based on a complaint and an investigative report, the Commission finds reasonable cause to believe that a violation has occurred, the Commission must hold either an adjudicatory hearing or dispose of the matter by consent order.

In 1999, the Commission received no new complaints. Of those that were pending from 1998, one was resolved by Consent Order; two were closed based on merit and one is still unresolved. The Commission also denied one motion to dismiss a complaint.

ADJUDICATORY HEARINGS

Chapter 19A-10

If the Commission holds an adjudicatory hearing, the Commission must:

- (1) give the subject of the complaint a copy of the complaint, including the identity of the complainant; and
- (2) give the subject of the complaint copies of those portions of approved minutes of the Commission relating to the complaint, and any report to the Commission issued by the investigator.

The Commission may:

- (1) issue summonses and subpoenas to compel attendance at a hearing;
- (2) require any person to produce records at a hearing; and
- (3) administer oaths or affirmations to witnesses.

The subject of the complaint and the County are the parties to the hearing. Each party may be represented by counsel and may present evidence and cross-examination witnesses. The prosecutor may be an attorney in the County Attorney's office, or a special counsel. The Commission may admit and give appropriate weight to evidence, including hearsay, that possesses probative value commonly accepted by reasonable and prudent persons.

Hearings are closed to the public, unless the subject of the complaint requests that it be open.

The Commission must make written findings of fact and conclusions of law based on the record made at the hearing. If the Commission finds that no violation occurred, the Commission must dismiss the complaint.

If the Commission dismisses a complaint without holding a hearing or after holding a closed hearing, the Commission may not release to the public the identity of the subject of the complaint, the complainant, or any witness.

If, however, the Commission finds that a violation has occurred, the complainant and the subject of the complaint must be promptly notified of the Commission's findings, conclusions, and the disposition of the complaint. The Commission must publicly disclose its findings and conclusions, including the identity of the subject of the complaint, the complainant and the witnesses.

If the Commission finds a violation, the Commission may:

- (1) seek injunctive relief;
- (2) proceed against the violator for a class A violation under the County Code;
- (3) seek an appropriate civil recovery;
- (4) seek the imposition of disciplinary action, including termination of employment, suspension of compensation or other disciplinary action;
- (5) order the subject of the complaint to stop any violation; and
- (6) issue a public or private reprimand.

The Commission may also refer to an appropriate prosecuting attorney any information indicating that a criminal offense may have occurred.

No hearings were held in 1999.

LOBBYING

Chapter 19A-21

Any individual or organization must register as a lobbyist under the Ethics Law if during the year that individual or organization:

Spends more than \$500 or receives more than \$500 to communicate with a public employee to influence legislative action by a County agency; or

Spends more than \$500 on meals, beverages, transportation, lodging, services, special events or gifts to influence executive or administrative action by a County agency.

In 1999, 48 lobbyists registered with the Ethics Commission and filed 108 lobbyist activity reports. Appendix D contains a list of those who registered and those who filed lobbyist reports.

OUTSIDE EMPLOYMENT

Chapter 19A-12

The Ethics Law prohibits a public employee from engaging in any other employment unless the employment is approved by the Commission. The Commission may impose conditions on its approval of other employment and may adopt appropriate procedures to receive and decide these requests. The procedures and policies for obtaining outside employment approval are contained in Executive Regulation 32-97 (Appendix C). A request for approval of outside employment is confidential until the commission takes action on the request.

In addition to the requirement for Commission approval of other employment generally, an employee must not be employed by, or own more than one percent of, any business that is regulated by the County agency with which the employee is affiliated; or negotiates or contracts with the County agency with which the employee is affiliated. In addition, an employee must not hold any employment relationship that would impair the impartiality and independence of judgment of the employee, unless the Commission grants a waiver.

The Commission received 430 requests for outside employment approval in 1999. All were approved with two receiving special conditions. Attached, as Appendix C is a listing of all approved requests. Requests with special conditions are presented in their entirety.

FINANCIAL DISCLOSURE STATEMENTS

Chapter 19A-17, and 19A-18

Certain county employees and volunteers are required to file financial disclosure statements. The Ethics Law and a supplemental Executive Regulation specify who must file and whether their disclosure is public or confidential. The forms are identical; however, the public forms may be viewed by the general public and confidential forms may be reviewed only by authorized government personnel.

As of the date of this Report, the following persons must file a public financial disclosure statement:

County Executive
County Council members
Chief Administrative Officer and Deputy Chief Administrative Officer Special Assistants to the County Executive
Director and deputy director of each department, principal office, and office in the County government
Members of the County Board of Appeals Members of the Ethics Commission
Members of the Merit System Protection Board
Persons appointed to serve in an acting capacity in positions listed above
Persons designated by the County Executive under Method 2
Persons designated by the County Council

The following persons must file a **confidential** financial disclosure form:

Asst. Chief Administrative Officers
Attorneys in the Office of the County Attorney Hearing Examiners
Members of the Fire and Rescue Commission
Paid members of boards, commissions, and committees

Members of the Board of License Commissioners Members of the Revenue Authority
Housing Opportunities Commission
Non-merit public employees paid above minimum of pay grade 20
Any executive branch public employee whom the County Executive
Designates by the method 2¹
Any legislative branch public employee designated by tile County Council.

Each public employee required to file an annual financial disclosure statement must also file a statement (1) within 15 days after the employee begins employment in a position required to file; and (2) before the employee terminates his employment with the County and is in a position required to file. A final paycheck will not be issued until the employee has filed the required financial disclosure statement.

In 1999, 1153 persons filed FY98 Financial Disclosure Statements with the Ethics Commission. 82 persons filed Public Financial Statements and 1071 persons filed Confidential Financial Disclosures.

¹ An Executive Regulation is currently being prepared to update the positions to which these requirements apply.

APPENDIX A
ADVISORY OPINIONS

MONTGOMERY COUNTY ETHICS COMMISSION

ADVISORY OPINION

February 10,1999

The Montgomery County Ethics Commission has been asked by an agency head for advice regarding the outside employment of a county employee as a private attorney. The question arises in connection with the consideration of an employment application by an individual who currently practices law as a sole practitioner and, if employed by the County, would want to continue practicing law on a limited basis. The agency head has sought an opinion on the question of whether the Montgomery County Ethics Law and the Ethics Commission would permit a county employee to engage in “outside employment” in the private practice of law as a sole practitioner.

PERTINENT FACTS

The applicant, a private attorney with a background in business counseling and an undergraduate degree in Finance, has applied for employment by Montgomery County as a Business Development Specialist.¹

As a private attorney, the applicant counsels small businesses and employees on employment law issues, including drafting employment handbooks, employment contracts, non compete/non-solicitation/non-disclosure agreements, severance agreements, and retirement plans. The applicant also counsels private law clients on corporate and non-profit issues.

APPLICABLE LAW

This request implicates several provisions of the Montgomery County Public Ethics Law,² as well as Ethics Commission Regulation 32-97.

¹ The Commission notes that this inquiry does not involve an application for employment as an attorney in the Office of the County Attorney. If it did, the Commission would have to disapprove the request because the Charter expressly prohibits the County Attorney and the staff of the County Attorney’s Office from engaging in any other law practice. Charter of Montgomery County §213. Neither does the applicant seek employment as a quasi-judicial officer, which would present different issues and might not be approved, depending upon the circumstances.

² Chapter 19A of the Montgomery County Code.

1. *“Other Employment” Provisions.*

a. The Public Ethics Law. Section 19A-12 of the Public Ethics Law contains a number of general and specific restrictions on the "other" or "outside" employment of county employees. Subsection (a) generally prohibits a county employee from engaging in any “other employment” unless the employment is approved by the Commission.¹ If the Commission approves the “other” or “outside” employment, it may impose conditions on its approval. *Id* Subsection (b) specifically prohibits a county employee from, among other things, holding any employment relationship that would impair the impartiality and independence of judgment of the county employee, unless the Commission grants a waiver under 19A-8(b). After receiving a written request and subject to statutory standards, the Commission also may waive any of these provisions. *Id.*

b. The Outside Employment Regulation. The "other employment" provisions of the Public Ethics Law are supplemented by an Outside Employment Regulation of the Commission.² In pertinent part, the Regulation prohibits county employees from being "employed by or having an economic interest in any business subject to the authority of or doing business with the county agency or department for which they work." ¶ 4.4.3 The Regulation also prohibits county employees from engaging in outside employment during the hours for which they are scheduled to work for the county, ¶ 4.1; and forbids the use of county property in the discharge of their outside employment, ¶ 4.5. Any provision of the Regulations may be waived in accordance with the criteria established in §19A-8 of the Code. ¶ 4.13.

2. *Conflicts-of-Interest Provisions.*

The conflicts-of-interest provisions of the Public Ethics Law are set forth at §19A-11(a). In pertinent part, these provisions prohibit one from participating as a county employee in, among other things:

¹ The Public Ethics Law defines the term employment or employ to mean "engaging in an activity for compensation." §§ 19A-4 (g) and (m) (1).

² The current regulation is Regulation 32-97, which was approved by County Council Resolution 13-1134.

³ For these purposes, "doing business with" the County means: (1) being a party with a County agency to a transaction that involves at least \$1,000 during a year; (2) negotiating a transaction with a County agency that involves at least \$1,000 during a year; or (3) submitting a bid or proposal to a County agency for a transaction that involves at least \$1,000 during a year. Mont. Co. Code, § 19A-4 (e).

- (1) any matter that affects, in a manner distinct from its effect on the public generally, any business in which the county employee has an economic interest;
- (2) any matter if he or she knows or reasonably should know that a party to the matter is a business in which the county employee has an economic interest as an employee; or
- (3) any business or individual that is a party to an existing contract with the county employee, if the contract could reasonably result in a conflict between private interests and official duties;
- (4) any debtor of the county employee if the debtor can directly and substantially affect an economic interest of the county employee.

These provisions also prohibit a county employee from: (1) intentionally using the prestige of his or her office for private gain or the gain of another; (2) disclosing confidential information relating to or maintained by a County agency that is not available to the public; or (3) using confidential information for personal gain or the gain of another. §§19A-14 (a) and 19A-15 (a).

After receiving a written request, the Commission may waive any of these provisions if certain standards are met. §19A-8.

3. *Underlying Policy and Liberal Construction of the Public Ethics Law.*

Both the "other employment" and "conflicts-of-interest" provisions are expressly intended to be "liberally construed" to accomplish the policy goals of the Public Ethics Law. Those goals are embodied in "legislative findings and statements of policy:

- (a) Our system of representative government depends in part on the people maintaining the highest trust in their officials and employees. The people have a right to public officials and employees who are impartial and use independent judgment.
- (b) The confidence and trust of the people erodes when the conduct of County business is subject to improper influence or even the appearance of improper influence.

To guard against improper influence, the Council enacts this public ethics law. This law sets comprehensive standards for the conduct County business and requires public employees to disclose information about their financial affairs.¹

¹ § 19A-2.

Ethics Law violations are subject to both civil and criminal sanctions.¹

ANALYSIS

As a general rule, the conflicts-of-interest provisions of the Montgomery County Public Ethics Law do not limit a county employee's activities as a *private* employee. A county employee's activities as a county employee, however, are limited by those provisions. For example, a *county* employee who engages in the private practice of law may not participate as a county employee in any matter if he or she knows or reasonably should know that a private client is a party to the matter. For these purposes, *participation* includes any action of any kind as a county employee, e.g., it precludes the county employee from discussing any aspect of the matter with county colleagues, staff or any other Montgomery County official or employee. The county employee's recusal from the matter must be complete and total.

The conflicts-of-interest provisions of the Public Ethics Law also prohibit a county employee from intentionally using the prestige of his or her office for private gain or the gain of another, and from disclosing confidential information (relating to or maintained by a County agency) that is not available to the public or using confidential information for personal gain or the gain of another.

Although the conflict-of-interest provisions do not limit directly a county employee's activities as a private employee, the "other employment" provisions of the Public Ethics Law do. In particular, these provisions prohibit a county employee from engaging in any "other employment" unless it is approved by the Commission, and that approval may contain conditions. § 19A-12(a). In addition, under certain circumstances an employee may not engage in outside employment unless the Commission grants a waiver in accordance with certain statutory standards. § 19A-12(b). There also is an Ethics Commission Regulation concerning outside employment. Among other things, the Regulation prohibits county employees from being employed by or having an economic interest in any business doing business with the county agency or department for which they work, § 4.5;² prohibits them from engaging in outside employment during the hours for which they are scheduled to work for the county, § 4.1; and forbids the use of county property in the discharge of their outside employment, § 4.5.

¹ §§ 19A-27 through 32.

² For these purposes, "doing business with" the County means: (1) being a party with a County agency to a transaction that involves at least \$1,000 during a year, (2) negotiating a transaction with a County agency that involves at least \$1,000 during a year; or (3) submitting a bid or proposal to a County agency for a transaction that involves at least \$1,000 during a year. Mont. Co. Code, §19A-4 (e).

In sum, in order to engage in "outside employment" as a private attorney, a county employee must: (1) obtain the approval of the Commission; (2) comply with the conditions, if any, of that approval; and (3) refrain from engaging in any activity prohibited by the conflicts-of-interest provisions of the Public Ethics Law.

Attached is a copy of the General Supplemental Conditions the Commission would place on any outside employment approval. In addition, the Commission could be expected to place the following kinds of special conditions on its approval of the outside employment of a county employee as an attorney engaged in the practice of law as a sole practitioner:

Special Conditions

1. The county employee must not participate as a private attorney in any matter (litigation, advice, research or any other kind of matter) involving:
 - (a) Montgomery County, Maryland;
 - (b) any officer, employee, agent Montgomery County, Maryland; or
 - (c) any other public officer, employee, agent or agency funded, in whole or in part, by Montgomery County, Maryland.¹
2. Except as provided in §19A-II (b) (1) of the Public Ethics Law, a county employee may not participate as a county employee in any matter that affects any of his or her private clients, unless the employee applies for and receives a waiver from the Commission with respect to that particular matter;² and
3. A county employee may permit biographical information published about the employee as a private attorney to note, along with other professional and legal accomplishments, that he or she is a county employee and the nature of the county employment. However, those kinds of statements must be limited to truly biographical information and may not be phrased to suggest that clients would benefit from the attorney's employment by the County.

¹ This restriction does not apply to litigation in the Circuit Court for Montgomery County not involving (1) Montgomery County, Maryland; (2) any officer, employee, agent or unit of Montgomery County, Maryland; or (3) any other public officer, employee, agent or agency funded, in whole or in part, by Montgomery County, Maryland.

² This prohibition does not apply to matters before the state courts in Montgomery County (i.e., the Circuit Court for Montgomery County and the District Court of Maryland in Montgomery County) to which neither the County nor any agency, officer, employee or other agent of the County is a party.

ADVICE

The Commission advised that, based on the information presented to the Commission and set forth above, a county business development specialist could engage in the private practice of law, as described above, without a conflict-of-interest within the meaning of the Public Ethics Law. Such an employee, therefore, could expect the Commission to approve a request to engage in such outside employment, subject to the Commission's General Supplemental Conditions and the special conditions set forth above.

This advice did not constitute either an approval of outside employment or a waiver for the purposes of the Public Ethics Law.¹ Thus, if employed by the County, the individual must comply with all applicable provisions of the Public Ethics Law, including, by way of example but not limitation, the prohibition of the intentional use of the prestige of his/her office for private gain or that of another (§19A-14) and the prohibition of the disclosure of confidential information (§19A-15). If particular circumstances arise that require a waiver and appear to meet the appropriate standard, the employee may request a waiver.²

¹ This advice also is limited to the requirements and restraints of the Public Ethics Law, and implementing regulations, policies, etc. It does not address any other applicable requirement or restraint, e.g., those arising out of CAO regulations, personnel regulations, department policy, or the Maryland Lawyers' Rules of Professional Conduct.

² See, e.g., §19A-8 of the Public Ethics Law and ~4.13 of Regulation 32-97.



ETHICS
COMMISSION

June 3, 1999

Commissioners

Kenneth C. Jackson
Chair

Elizabeth K. Kellar
Alastair McArthur
Lee Petty
Walter Scheiber

Commission Staff

Barbara McNally
Executive Secretary
Lynn Launer
Administrative Assistant
June 3, 1999

Rockville, Maryland 20850

Dear:

In a February 9, 1999 memorandum, you wrote to the Commission stating, in pertinent part that:

1. you are the of the Department of Public Works and Transportation's Division of;
2. you soon would be eligible for retirement;
3. has expressed an interest in hiring you if you decide to retire;
4. has a contract with Montgomery County under which it provides construction management services supporting the.....project currently under construction: and
5. the County's Contract Administrator for the contract works in your division.

You, therefore, requested:

an advisory opinion “on the definition of the term 'official responsibility' as used in Section 19A-13(b)(2) and whether [your] responsibilities as a constitute official responsibility” for the¹and,

a waiver of the one year moratorium of Sec 19A-13(b) on entering into employment with.....²

¹ §19A-13(b) provides:

For one year after the effective date of termination from County employment, a former public employee must not enter into any employment understanding or arrangement (express, implied, or tacit) with any person or business that contracts with a County agency if the public employee:

- (1) significant participated in regulating the person or business; or
- (2) had official responsibility concerning a contract with the person or business (except a non- discretionary contract with a regulated public entity.)

² §19A-13(b) provides:

After receiving a written request, the Commission may waive the prohibitions of Section 19A- 13 if it finds that:

- (1) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or
- (2) the proposed employment is not likely to create an actual conflict of interest

In support of your request, you described your responsibilities as Chief of DFS as follows:

“My primary responsibility as.....
.....is to make facilities available for County programs. I also have charge of the County's.....Facilities are made available in several ways; maintenance, care and renovation of existing facilities. I discharge my responsibilities through three Section Chiefs.”

Your memorandum also described: (1) the responsibilities of your direct subordinate, the Chief, as well as the.....program managers who report to the.....Chief, and (2) the.....manager selection process.

You further advised the Commission:

“I do not sit on vendor selection teams. Nor do I participate in contractor performance evaluations, billings review or payment processing. I develop and approve policy and standards to guide the section chiefs and managers; assist in the development of strategic facility plans to support County initiatives, prepare, review and defend budgets; and, on occasions, assist the Project Managers by acting as an expediter to get documents through the procurement process i.e. County Attorney and Contract Review Committee.”

Your memorandum then addressed why, in your view, the Commission should grant a waiver of § 19A- 13 (b) of the Ethics Law. Among other things, you stated that if you are employed by.....your responsibilities will not include work on any contract with Montgomery County government or the “marketing of Montgomery County government” for a period of 12 months.

After reviewing the request and discussing the matter preliminarily at its February meeting, the Commission instructed the Associate County Attorney who is counsel to the Commission to investigate and report to it regarding your responsibilities and activities in connection with the.....contract.

Counsel submitted his report to the Commission in a memorandum that was reviewed at the Commission's March meeting. The report revealed significant involvement by you in the original award of the..... contract and in every amendment of that contract, including a relatively recent, major modification of the contract. In pertinent part, Counsel reported:

..... **Agreement Overview**

As described in a June 8, 1998, memorandum from Associate County Attorney Melnick:

On December 1, 1989, the County entered into a contract with Project Management, Inc. (" "), the purpose of which was for professional construction program management for the
II At the time of this contract, the precise manner of construction, management and nature of contractual relationships to perform the work was yet to be determined. The contract named as the Program Manager (CPM) "for any and all phases of the Project." (Contract, page 1). . . .
. . . .was required to work in "cooperation with, and reliance upon, the services of the Design Consultant.¹ As CPM, it agreed to "furnish business administration and management services, and to perform in an expeditious and economic manner consistent with the interests of the County".

The parties entered into Amendments on March 13 and August 31, 1990, which varied the scope of services and increased compensation. The contract had no fixed term, but did identify the duration for each of the five phases, and for the project as a whole. The duration for all services under the contract passed in approximately 1994, with no amendment to the contract.

The County Council recently approved funding for the New, at least in part based on
. . . continuing efforts in the Pre-Design and Design Phases. DFS hopes that the Design Phase will be completed, and that the Construction Phase will begin, by

¹ The "Design Consultant" was to be selected by the County "to prepare the drawings and specifications for the construction of the Project."

October of 1998. It has a project completion target date of March or April 1999.

DFS would like to amend the project management contract with, to expand services. It also desires to enter into approximately 23 prime contracts for construction, wherein the County would act as General Contractor and. would be Project Manager.

June 9, 1998 memorandum from Mr. Melnick to Chief,

The expansion that DFS desired and ultimately achieved was significant, both as a matter of construction contracting policy and in terms of the compensation would receive. Whereas Montgomery County traditionally had obtained construction services through a prime contract, with the prime contractor subcontracting-as its sole responsibility and at its own risk-for a variety of specialized services (*e.g.*, electrical, plumbing, etc.), the proposed expansion or modification would have the County use a construction manager, with the County itself contracting with multiple specialty contractors as prime contractors. As a matter of construction contracting policy, this was a legally permissible approach, but one that presented significant policy questions, increased liability exposure, and had not been used previously by Montgomery County. Both the County Attorney's Office and the Office of Procurement had reservations about whether the County had the resources to undertake this role, and whether projected cost savings were accurate in view of the increased risks will be compensated in excess of \$ 1 million dollars for the increased services.

In an unattributed, one-page, June 10, 1998, document in the Office of Procurement file, the pros and cons of the proposal to amend the contract were stated as follows:

PROS

Direct control over contractors performing work.

Elimination of the risk of a litigious General Contractor who may systematically plan for major claims, and solicits and coordinates same from subs.

May improve probability of project being built with a harmonious team relationship among the parties.

Savings of 1.8 million.

Increased contracting opportunities with local and minority firms.

Greater, and earlier, visibility of contract and construction issues which may impact project cost and schedule.

CONS

The solicitation of 23 separate [contractors], with the possibility of protests etc. that could delay the project's completion.

Liability exposure arising from acts or omissions of multiple contractors on the site. Who dropped the banana peel?

Enormous risk of extensive claims by 23 contractors, resulting from other contractors failing to perform work timely along the critical path of construction.

Pertinent Chronology of the Contract

1989

July 24, 1989 responsibilities in this matter date back to at least July 24,1989, when, as Chief of the Section, he joined in a memorandum requesting that the Contract Review Committee (CRC) approve the solicitation of proposals for Project Management Services at the. That memorandum identified the members of the Qualification and Selection Committee, (QSC) which is a committee established by a "Using Department" for the purpose of evaluating responses submitted by offerors. The memorandum identified as the team leader of the QSC for the proposed solicitation.

July 27, 1989 appeared before the CRC regarding the Project Management Services RFP .

July 31, 1989., as Chief, Division, joined in a memorandum to John A. Bat tan, Acting Director, Office of Procurement, concerning changes that had been made in the RFP "per CRC meeting on July 27, 1989.

August 2, 1989. L. White of OAS-DFS sent draft minutes of the July 27, 1989, CRC meeting to the Office of Procurement and copied

August 10,1989 wrote to the Acting Director of Procurement requesting certain changes in the draft minutes of the July 27, 1989, CRC meeting.

September 6, 12, and 18, 1989. The QSC met and screened the 15 written proposals received in response to the. Project Management Services RFP, and ranked.as the second of the three top rated offerors participated as a member of the QSC.

October 4,1989. The QSC conducted interviews and, thereafter, rated as the top offeror.

December 10, 1989 joined, as Chief of the. Management Division of the Dept. of Facilities and Services, in a memorandum to the Acting Director, Office of Procurement, Dept. of Finance, recommending awarding the project manager contract to. The memorandum listed the QSC members, including, and offered their recommendation that the contract be awarded to. Attached to the memorandum was a record of the selection process which included the usual QSC certifications, including the certification of

October 17,1989. Mr. Larry White sent the CRC draft minutes of the CRC's 10/12/89 meeting. Item 12 on the agenda of that meeting was entitled. The minutes state thatwas present and there was" a brief discussion. "A motion to award the contract to was made, seconded and unanimously approved.

November 15,1989. The County and entered into an agreement for construction management services for the name appeared in three places:

Paragraph 16 of the Agreement identified as the County's contact for "any notice required by this Agreement or other communication."

The signature page of the Agreement carried the recommendation of¹

Article 15 of the Agreement's ATTACHMENT C (SUPPLEMENTAL GENERAL CONDITIONS OF CONTRACT) provided for to maintain certain insurance, and required that the Certificate Holder be "Montgomery County Government Attn:"

November 16, 1989. Mr. White sent to the Chief of Purchasing and Materiel Management Division, Dept. of Finance, a form "padm 56:Rev 03/21/86," dated November 16, 1 (sic), furnishing information to assist in processing and reporting the contract awarded to

November 17, 1989. was among those who signed a memorandum recommending that the Acting Director of the Office of Procurement approve the contract negotiated with.

1990

January 25, 1990. Under cover of a letter to , a vice- president, , submitted, as requested, a 'proposal to accelerate the submission of the draft program of requirements.' On the same date, recommended proposed Amendment No.1 by signing his name for that purpose on the signature page of the Amendment.

¹ In § 18 (e) of the General Conditions of this Agreement, 'the Contractor \V3ITant[ed] that during the contract term it will employ no present or former county employee or official in violation of Section 11 B-52 or 19A-8 of the Montgomery County Code.' § 11B-52 provides:

Unless authorized by the Ethics Commission, a person engaged in a procurement matter with the County must not employ or offer to employ a public employee if the duties of the public employee include significant participation in the procurement matter. Public employee, and significant participation, as used in this section, are defined in Chapter 19A.

Chapter 19A defines "significant participation" to mean "direct administrative or operating authority to approve, disapprove, or otherwise decide government action with respect to a specific matter, whether the authority is intermediate or final, exercisable alone or with others, and exercised personally or through subordinates. It ordinarily does not include program or legislative oversight, or budget preparation, review, or adoption." §19A-13 (c).

February 2, 1990 sent an original and four signed copies of Contract Amendment No. 1, and then sent the amendment to the Director of the Office of Procurement, via the Director of the Dept. of Facilities & Services, recommending "awarding Amendment No.1."

February 9, 1990. The CRC approved Amendment No. I. The minutes of that meeting record that the matter was placed on the agenda via FACILITY MEMO of 02/02/90, 217 -603 1," that was present at the meeting, that there was a brief discussion regarding the matter, and that Amendment No.1 was approved.

March 13, 1990. The Director of the Office of Procurement signed Contract Amendment No. 1, adding the Condensed Program of Requirements, as per the January 25th letter. The Amendment carried ...written recommendation on its signature page, dated January 25, 1990.

July 13, 1990, aVice-President, wrote to submitting, as requested, a proposal to provide additional services for the.

August 13, 1990 wrote to the Director of the Office of Procurement, forwarding Amendment No.2 to the contract for final processing and recommending approval recommendation also appeared on the signature page of the Amendment.

August 16,1990. Amendment 2 was the first item on the agenda of the CRC meeting. The minutes of that meeting state that was present and that he addressed the need for the amendment.

August 21, 1990 resubmitted Contract Amendment No.2 to the Director of the Office of Procurement for signature recommendation, dated 7/18/90, appeared on the signature page of the Amendment.

1995

June 6, 1995, as Chief of the Management Division, wrote to regarding "Existing Site Feasibility Study, and instructed the company to proceed with its proposal, dated May 26, 1995.

1996

February 27, 1996. In a letter to notified to “proceed with the building component of the new 1100/900 facility cost estimate.”

1998

March 25, 1998. International's Senior Associate sent F&S's Capital Projects Manager "a *revised* Fee Proposal, Staffing Schedule, Scope of Work, Proposed Contract Modifications and Resumes of Key Staff for the." (Emphasis supplied.) The 15 pages Scope of Services carried the title "revised 01/12/98."

March, 1998. DFS personnel contacted the County Attorney's Office to schedule an April 1, 1998, meeting concerning a proposed modification to the contract. Mr. Hansen, via voice mail, assigned the matter to Associate County Attorney Richard H. Melnick, who, among other things, advises and represents the Office of Procurement. Mr. Melnick's notes regarding the assignment contain name and telephone number .

April 1, and approximately May 1, 1998. Mr. Melnick met with representatives of DFS and the Office of Procurement. Mr. Melnick had several significant questions regarding the proposal. According to Mr. Melnick, the senior F&S representative, , made it clear that this matter was very important to his direct superior, Following one of these meetings, himself approached Mr .Melnick and talked with him regarding the importance of the proposal and questions that had been raised about it.

June 8, 1998. Mr. Melnick wrote to Among those issues were the following :

Can the [.] contract now be amended to include the expanded scope of management services?

Can the County undertake the responsibilities of a general contractor and enter into multiple contracts to perform the construction?

Mr. Melnick advised the proposed amendment permissibly expanded the scope of services, and, therefore, could be amended. On the latter issue, he observed:

The decision to undertake the role and responsibilities of general contractor is one of policy, with legal implications. Deciding to enter into multiple prime contracts for the construction work requires a cost-benefit analysis including: monies saved; control desired; expertise and management available to monitor and be accountable for the progress and coordination of each prime contractor; the potential of liability and delay damages that may arise from the actions and omissions of one or more prime contractors; and, the potential for project delay.

June 18, 1998. Item No.5 on the CRC Agenda was the proposed modification of the Contract. The CRC Agenda Assignment/ Review and Decision Transmittal Form prepared by the Office of Procurement indicated that the projected cost of the proposed amendment was \$2.5 million dollars.

The CRC expressed serious concerns about whether the County could obtain the desired services through a modification of the contract, and about the prudence of a contract-manager/multiple-prime- contractors method, rather than the traditional single-prime contractor/multiple-subcontractors relationship. The Committee, therefore, deferred action on the item, and asked the County Attorney's Office for legal advice.

July 1, 1998. At request, a meeting was held in the Office of the County Attorney regarding this matter. Present were Mr of DFS; County Attorney Thompson, Marc Hansen, Richard Melnick and Judson Garrett of the County Attorney's Office; and Richard G. Hawes, Director of Construction, Montgomery County Public Schools System. Mr. Hawes was present at the request of DFS to brief the County Attorney on the School System's successful use of the construction manager approach proposed by Amendment No.3. Mr. was the principal spokesperson for DFS, and pressed strongly the case for Amendment No.3.

July 7, 1998. wrote to the Director of the Office of Procurement requesting approval of an amendment to the contract, *i.e.*, Amendment No.3, to provide contract management services and a corresponding increase in compensation in the amount of \$1,045,833.

July 9, 1998. Associate County Attorney Garrett, as counsel to the CRC, submitted, on behalf of the County Attorney's Office, a memorandum to the Chairman, in which he advised, in pertinent part:

At the request of the Contract Review Committee (CRC), I have reviewed the question of whether the proposed modification to the Construction Management Contract with Program Management, Inc., is legally permissible. I have concluded that although the modification may constitute a change beyond the scope of the competition, the modification nevertheless is legally permissible if the Committee determines that there is sufficient justification for acquiring the additional services from on a non-competitive basis, *e.g.*, on a sole source basis.

The Chief of the Division of DFS has submitted a memorandum to the Director [of Procurement] in which he states that is intimately familiar with the project and that only can meet the performance delivery date required by the County. If the CRC determines, as a matter of fact, that the proposed modification meets the criteria for a noncompetitive procurement, it may, in its discretion, approve the proposed amendment.

At its regularly scheduled meeting on the same day, the CRC again took up the matter of proposed Amendment No.3 to the contract. The minutes reflect that Mr. and represented the Dept. of Public Works and Transportation, DFS, and that the "County Attorney and CRC determined that the contract can be amended [as proposed] provided the contract meets the sole source criteria for award." ...again was the principal spokesperson for DFS, and strongly pressed the case for Amendment No.3. Among other things, advised that considerations of timeliness-as presented by the needs of a nearby school-as well as unique knowledge constituted sufficient sole source justification. In addition, Mr. assured the CRC that, as a matter of fact, the services to be provided under the Amendment were within the scope of the competition for the original contract. The Committee approved the Amendment.

July 21, 1998. wrote to the Chief Administrative Officer (CAO) recommending approval of the use of the a construction manager and multiple contractor approach for the construction of the

July 29,1998. The CAO wrote to approving recommendation of July 21, 1998.

Following its review of counsel's report, the Commission granted your request to appear at its April meeting and address the matter in person. During that meeting, you acknowledged that you have had official responsibility for the contract, and that the project has been the Division's most significant project during your approximately ten-year tenure with the County. You, therefore, requested that the Commission exercise its discretion, under §19A-8(c)(2), to waive the one-year prohibition of §19A-13(b) on the basis that your proposed employment is not likely to create an actual conflict of interest.

Even absent your acknowledgment, there would be no question about the applicability of § 19 A-13 (b) to yourcontract responsibilities. Because the term "official responsibility" is not defined by the County Ethics Law, it is to be given its natural and ordinary meaning considered in the light of the nature of the subject matter and the purposes to be accomplished by the legislation.¹ The numerous actions you have taken over the years in connection with the contract leave no doubt that as Chief of the and, previously, as Chief Section, you had, in your official capacity, responsibility for various aspects of the contract. Therefore, the only question presented is whether, notwithstanding your official responsibility for the contract, the Commission, pursuant to § 19A-8(c), should waive the one-year employment prohibition of § 19A-13.

The Montgomery County Public Ethics Law is founded on the following express Legislative findings and statements of policy:

- (a) Our system of representative government depends in part on the people maintaining the highest trust in their officials and employees. The people have a right to public officials and employees who are impartial and use independent judgment.
- (b) The confidence and trust of the people erodes when the conduct of County business is subject to improper influence or even the *appearance* of improper influence.
- (c) To guard against improper influence, the Council enacts this public ethics law. This law sets comprehensive standards for the

¹ Revis v. "Maryland Auto. Ins. Fund. 322 Md. 683 (1991)

conduct of County business and requires public employees to disclose information about their financial affairs.

(d) The Council intends that this Chapter, except in the context of imposing criminal sanctions, be liberally construed to accomplish the policy goals of this Chapter. The Council also intends that this Chapter meet the requirement under state law that the County adopts legislation that is similar to the state public ethics law.

Montgomery County Code, Sec. 19A-2. (Emphasis supplied.)

Given your involvement and the involvement of your Division in the . . . contract - especially your pivotal role in the recent and significant amendment of that contract -the Commission is convinced that a waiver of the one-year prohibition on your employment by. . .could create an appearance of significant impropriety or improper influence and seriously erode the confidence and trust of the people in the conduct of County business.

Therefore, although the Commission has the discretion to waive the one- year prohibition on the ground that the proposed employment is not likely to create an actual conflict of interest, it declines to exercise that discretion given the facts of this matter, *i.e.*, your significant involvement in this contract recently and over an extended period of time.

Very truly yours,

Kenneth C. Jackson, Sr.
Chairman

NOTICE OF RIGHT TO JUDICIAL REVIEW

§ 19A-6 (c) of the Montgomery County Public Ethics Law provides that a final decision of the Commission on a request for a waiver “may be appealed to the Circuit Court under the applicable Maryland Rules governing administrative appeals.”



ETHICS
COMMISSION

September 8, 1999

Commissioners

Kenneth C. Jackson
Chair

Elizabeth K. Kellar
Alastair McArthur
Lee Petty
Walter Scheiber

Commission Staff

Barbara McNally
Executive Secretary
Lynn Launer
Administrative Assistant
June 3, 1999

Re:

Dear

At its meeting last night, the Ethics Commission reviewed your August 11, 1999, memorandum to Ms. McNally in which you requested that the Commission approve for a temporary assignment with the, as a result of the e3.rly retirement of from the position of within [your] Division." According to

your memorandum:

retired from the County, as the, in the, with the effective date of July 1, 1998. As a for over 20 years, is very familiar with the preparation and monitoring of the Division's Operating and CIP budgets, and with all the administrative procedures of the Division and the County. He acted as a Division Chief on many occasions and is, therefore, very well versed on what we do

is not currently employed, nor has he been employed with any organization doing business with the Division or any other County agency. In fact, he has not been employed with anyone since his retirement.

has agreed to provide his services for this temporary assignment as a contractor/consultant, for a period not to extend beyond December 3, 1999, at or about the rate of pay he was making when he left the County Government service. The total cost of this assignment ~ be under \$25,000.

The only Public Ethics Law restrictions on the employment of a former public employee are the so-called 1-year and 10-year prohibitions of §19A-13 of the Montgomery County Code:

(a) A former public employee must not accept employment or assist any party, other than a County agency, in a case, contract, or other specific - matter for 10 years after the last date the employee significantly participated in the matter as a public employee.

(b) For one year after the effective date of termination from County employment a former public employee must not enter into any employment understanding or arrangement (express, implied, or tacit) with any person or business that contracts with a County agency if the public employee:

(1) significantly participated in regulating the person or business; or,

(2) had official responsibility concerning a contract with the person or business (except a non-discretionary contract with a regulated public entity).

According to your memorandum, effective date of termination from County employment was July 1, 1998-more than one year ago. The 1-year prohibition, therefore, is not applicable to

Secondly, nothing in your memorandum indicates that is accepting any employment or assisting any party , other than a County agency , in a case, contract, or other specific matter in which he significantly participated as a public employee. If that is the case, then the 10-year prohibition also does not apply to the use of services as described in your memorandum. If that is not the case, then the Commission requires a supplemental memorandum that sufficiently identifies the case, contract or other specific matter.

Very truly yours,

Kenneth C. Jackson, Sr.
Chairman



ETHICS
COMMISSION

Commissioners

Kenneth C. Jackson
Chair

Elizabeth K. Kellar
Alastair McArthur
Lee Petty
Walter Scheiber

Commission Staff

Barbara McNally
Executive Secretary

Lynn Launer
Administrative Assistant
June 3, 1999

December 20, 1999

Dear

By your letter of October 8, 1999, the [redacted] sought “assurance from the Ethics Commission that activities for which [the is] funded by the County do not constitute lobbying.” Your letter was prompted by an August 25, 1999, letter to the [redacted] from [redacted] CPS, the Department of Health and Human Services’ monitor for its contract with the [redacted] for the operation of the [redacted].¹In pertinent part, [redacted] wrote:

[I]t appears that the [redacted] contract with the Department continues to provide nearly all the organization's funding. One effect of this is that funds appear to be supporting lobbying activities above and beyond the intent of the contract.

In recognition of this history and current situation, I am relaying the Department's intent that the [redacted] should rely on outside support and funding for its advocacy efforts and devote County funds to expanding the operation of the [redacted] as an information, referral, outreach and education service. In addition, [redacted] staff whose salaries are paid from County contract funds may provide information and support services, but advocacy and possible lobbying activities are more appropriately performed by board members and other community volunteers.

¹This is a contract between Montgomery County, Maryland, and the [redacted] under which the latter operates the [redacted], the County's previous undated memorandum to the Ethics Commission's Executive Secretary regarding the employment of a former County Employee by the [redacted].

After discussing future contracting, [redacted] letter made two requests for this fiscal year:

1. Assurance from the Ethics Commission and the funded by the County do not constitute lobbying [redacted] board that activities funded by the County do not constitute lobbying.
2. A workplan showing how the terms of the contract are being met and what percent of staff time is devoted to the particular contract requirements. The workplan must relate to the County's stated outcomes and must be approved by [redacted] as contract monitor, by October 15.

Reflecting [redacted] concerns, your letter to this Commission states that the [redacted] “confine [s its] activity to the work as described in the Scope of Service and [its] current workplan,” both of which you enclosed for review by the Ethics Commission.

Treating your letter, as we must, as a request for an advisory opinion,¹ the Commission advises that, for the purposes of the Montgomery County Public Ethics Law, lobbying is “any attempt to influence any legislative, executive, or administrative action by a County agency.”² Whether an activity described in the scope of service and work plan you have submitted would constitute lobbying, however, is not readily apparent given the generality of those provisions. Such a determination requires more specifics than these documents contain. The Commission, therefore, is unable to advise whether any of these general activities would constitute lobbying.

In any event, lobbying under that contract or in the performance of any other activity for which the is funded by the County would not be prohibited by the Ethics Law,³ although it would be subject to that law, unless excepted or exempted.⁴ The lobbying provisions of the Ethics Law are merely disclosure provisions that apply, with certain exceptions and exemptions, to all persons, whether or not they are funded by or acting under a contract with the County. Those provisions require an individual or organization to register as a lobbyist and to file certain reports if, during a year, the individual or organization:

(1) communicates with a public employee to influence legislative action by a County

¹ The Commission's advisory authority is limited to requests from persons subject to the Ethics Law or the ethics provisions of the County Board of Appeals law [§2-109] or the County Procurement Law [§§ 11B-51 and 11B-52(a)] for advice concerning the meaning or application of any of those laws to them. *See* Montgomery County Code, §19A-7 (a).

² *Id.* §19A-4 (k)

³ The Ethics In Public Contracting provisions of the Montgomery County Procurement Law also do not prohibit such lobbying. *See* Montgomery County Code, §11B-51.

⁴ Whether some other law or policy or the contract itself prohibits such lobbying is beyond the ken of the Ethics Commission, and, therefore, is not addressed by this advice. Those are matters on which you must seek the advice of either legal counsel or the contracting agency.

agency, and for that purpose either.

(A) spends more than \$500, or

(B) receives compensation, including a pro-rated part of a salary or fee for services, totaling more than \$500; or

(2) communicates with a public employee to influence executive or administrative action by a County agency, and for that purpose spends a total of more than \$500 for;

(A) meals and beverage

(B) transportation;

(C) lodging;

(D) provision of any service;

(E) one or more special events; and

(F) one or more gifts.¹

These Ethics Law lobbying registration provisions, however, do not apply to:

(1) drafting bills or advising clients about proposed or pending legislation without any other attempt to influence the legislative process;

(2) communicate with a County agency when requested by the agency, without engaging in any other activity to influence legislative, administrative, or executive action on the subject of the communication;

(3) communicating with a County agency as an official act of an official or employee of the state, a political subdivision of the state, or the United States, and not on behalf of any other person or business;

(4) actions of a publisher or working journalist in the ordinary course of disseminating news or making editorial comment to the general public, without engaging in other lobbying that would directly and specifically benefit the economic interests of a specific person or business;

(5) appearing before a County agency at the request of a lobbyist if the witness:

¹ §19A-21 (a).

- (A) takes no other action to influence legislative, administrative, or executive action;
and
 - (B) identifies himself or herself as testifying at the request of the lobbyist;
- (6) communicating on behalf of a religious organization for the sole purpose of protecting the right of its members to practice the doctrine of the organization;
- (7) communicating as an official duty of an officer, director, member, or employee of an organization engaged exclusively in lobbying for counties or municipalities, and not on behalf of any other person or business;
- (8) acts regulated under Chapter 8 [of the County Code], Cable Communications; and
- (9) *an action of any person representing an organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code if:*
- (A) the action promotes the exempt purposes of the organization; and*
 - (B) the organization gave gifts totaling less than \$500 to public employees in a year ; and*
 - (C) the representative is paid or spends less than \$1,000 in a year to influence executive, administrative, and legislative action.¹*

Furthermore, except for the filing of an authorization to lobby,² an individual or organization is exempt from the *reporting* requirements of the Ethics Law if the individual or organization:

- (1) compensates one or more lobbyists;
- (2) reasonably believes that each lobbyist will timely register and report all expenditures required to be reported; and
- (3) engages in no other lobbying.³

¹ §19A-21 (c). (Emphasis added)

² §19A-22 requires that every employer of a lobbyist sign an authorization to act that includes certain prescribed information.

³ §19A-21 (d).

In summary, whether an activity described in the scope of service and work plan you have submitted would constitute lobbying is not readily apparent given the generality of those provisions. Such a determination requires more specifics than these documents contain. The Commission, therefore, is unable to advise whether any of these general activities would constitute lobbying. In any event, however, lobbying under the _____ contract or in the performance of any other activity funded by the County would not be prohibited by the Ethics Law, although it would be subject to that law and would require that the _____ or any person lobbying on behalf of the _____ register as a lobbyist and file the requisite reports, unless excepted or exempted from those requirements by the Ethics Law.¹ Other laws or policies, however, or the contract itself may prohibit the _____ from lobbying under the contract or in the performance of any other activity funded by the County.

If you have any question about whether specific conduct would constitute lobbying for the purposes of the Ethics Law, the Commission will be happy to address it.

Very truly yours

Kenneth c. Jackson, Sr., Chair

¹ For example, the lobbying provisions of the Ethics Law would not apply to _____ the if: (1) it is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; (2) its lobbying promotes the exempt purposes of the organization; (3) the organization gave gifts totaling less than \$500 in a year to public employees subject to the Ethics Law; and (4) the representative is paid or spends less than \$ 1,000 in a year to influence executive, administrative, and legislative action.



ETHICS
COMMISSION

Commissioners
Kenneth C. Jackson
Chair

Elizabeth K. Kellar
Alastair McArthur
Lee Petty
Walter Scheiber

Commission Staff
Barbara McNally
Executive Secretary
Lynn Launer
Administrative Assistant
June 3, 1999

July 22, 1999

Mary Whitehead
2301 Glenallen Ave., #105
Silver Spring, MD 20906

The Montgomery County Ethics Commission (the "Commission") has received and reviewed both your June 15, 1999, request for a waiver of a post-county-employment provision of the Montgomery County Public Ethics Law, and the June 15, 1999, supporting memorandum from Assistant Chief Administrative Officer Snead. In particular, you have asked if you may enter into a short-term, part-time, employment relationship with Mondre Energy, Inc., of Philadelphia, P.A., which provides consultant services to the County.

APPLICABLE LAW

Your request implicates the following provisions of the Montgomery County Ethics Law:

§19A-13.

(a) A former public employee must not accept employment or assist any party, other than a County agency, in a case, contract, or other specific matter for 10 years after the last date the employee significantly participated in the matter as a public employee.

(b) For one year after the effective date of termination from County employment, a former public employee must not enter into any employment understanding or arrangement (express, implied, or tacit) with any person or business that contracts with a County agency if the public employee:

(1) significantly participated in regulating the person or business; or

(2) had official responsibility concerning a contract with the person or business (except a non-discretionary contract with a regulated public utility).

(c) Significant participation means direct administrative or operating authority to approve, disapprove, or otherwise decide government action with respect to a specific matter, whether the authority is intermediate or final, exercisable alone or with others, and exercised personally or through subordinates. It ordinarily does not include program or legislative oversight, or budget preparation, review, or adoption.

19A-8

(c) After receiving a written request, the Commission may waive the prohibitions of Section 19A-13 if it finds that:

(1) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or

(2) the proposed employment is not likely to create an actual conflict of interest.

RELEVANT FACTS

Your request and Ms. Snead's supporting memorandum indicate, in pertinent part:

You are an energy planner for the Montgomery County Department of Environmental Protection who is retiring from County service on July 1, 1999.

You are the only person providing energy policy analysis within County government. In this capacity you have been deeply involved over the past two years in the County's efforts to understand and participate in the statewide move to purchase electricity and natural gas in a deregulated and restructured environment.

You were instrumental in recommending that the County become a party to the Maryland Public Service Commission proceedings on electric utility restructuring and urged the establishment of the Interagency Task Force on Electric Deregulation, which was formed in June 1997.

Among your utility restructuring activities, you draft various written submissions and testimony, participate on behalf of the County in a number of PSC Working Groups and settlement negotiations with PEPCO, provide input to the Office of Intergovernmental Relations with respect to legislative proposals, and provide lead staff support for the activities of the Task Force as they relate to policy issues. Your extensive knowledge of the needs of the County and the workings of the PSC roundtables is unique. No one else in County service has similar experience.

In mid-1998, the Department of Public Works and Transportation, at the suggestion of the Task Force on Electric Deregulation, solicited proposals from offerors for consultant services for some of the technical and legal needs in dealing with electric utility restructuring. You served as one of five members of a Qualifications and Selection Committee who reviewed the proposals and interviewed the candidates. On the unanimous recommendation of the Committee, Mondre Energy, Inc., of Philadelphia, was awarded a contract for a term of one year (FY 99), budgeted at \$275,000, with four one-year options.¹

Your only involvement with the Mondre Energy contract was as a member of the QSC. You did not draft or negotiate the contract, and you have neither administered nor monitored the contract.

Your departure from County service will leave the County with a vacuum. Although you are intent on retiring, you are willing to work on a short-term, part-time basis. The County has evaluated the option of retaining you on a personal services contract and has decided that it would be preferable if you could provide policy direction in a consulting capacity through an arrangement with Mondre Energy for a minimum of one year and a maximum of two years. Neither you nor the contractor suggested this arrangement.

¹ With the enactment of State legislation authorizing restructuring of the electric utility industry in Maryland and allowing customers to purchase electricity supply in a competitive market as of July 1, 2000, the contract was extended for FY00, and \$300,00 in funding was approved.

In support of your request for a waiver, you offered the following:

In replacing you, DEP has determined to fill the position with an energy generalist, someone whose energy-related knowledge is broad and interwoven with environmental linkages, but whose knowledge of utility restructuring issues is limited. This was a conscious decision to seek an employee for the long term rather than an individual with very specialized knowledge.

You and your spouse are building a house in Talbot County and will be leaving Montgomery County by early fall.

You do not wish to work full time, nor to commute to Rockville on a regular basis. You would work for Mondre Energy nor more than 20 hours per week, and be paid no more than \$40,000, plus reasonable expenses, over the course of a year. You envision your role as providing the same support to the Task Force and to those involved with electric deregulation for the County as you have been providing while a County employee.

This arrangement would last for a minimum of one year and a maximum of two years, by which time the County will be purchasing its electricity in a competitive market and the consultant's tasks will be complete.

There is no conflict of interest in the proposed arrangement. You have neither administered the [Mondre Energy] contract nor monitored the contractor's work. You do not review or approve the contractor's bills.

In supporting your request, the Assistant CAO has stated, among other things:

[A]llowing [Ms. Whitehead] to work under [the Mondre] contract is cost effective and demonstrates a “best practice” approach.

* * *

Because she will be working on behalf of the County, the proposed employment of Ms. Whitehead by Mondre does not appear to be likely to create an actual conflict of interest. Nor does the proposed employment appear to give the contractor any advantage.

DECISION

Against this unique background, and based on the representations contained in your memorandum and that of the Assistant CAO—especially the fact that this post-county employment was suggested by county representatives as the best means of accommodating the continuing short-term needs of the County—the Commission finds that your short-term, part-time, employment relationship with Mondre Energy, Inc., for the limited purposes and time described in your request will not create an actual conflict of interest and, indeed, is in the best interest of Montgomery County .

The Commission, therefore, waives the provisions of §19A-13 as requested.

Very truly yours,

Kenneth C. Jackson, Sr.
Chairman

OUTSIDE EMPLOYMENT APPLICATIONS - 1999

Abrahams David	Office of County Attorney	Settlement Officer, American Title Assoc.
Adams, Norman	Sheriff's Office	Security, Hechingers
Akkala, Steven	Fire & Rescue Services	Lifeguard, B-CC YMCA
Akkala, Steven	Fire & Rescue Services	Lifeguard, City of Rockville
Alexander, Brenda	Montgomery County Police	Watchman, OakFair Townhome Assoc.
Alexander, Brenda	Montgomery County Police	Security Officer, DarCars Motors
Alexander, Brenda	Montgomery County Police	Security Officer, Grady Management
Allen, Harold	Montgomery County Police	Security Officer, Landon School
Ambrose, Pamela	Dept. of Recreation	Piano Teacher, Self-Employed
Ammons, Tony	Montgomery County Police	Security Guard, Kemp Mill Synagogue
Ammons, Tony	Montgomery County Police	Security Guard, Ruby Tuesdays
Ammons, Tony	Montgomery County Police	Security Guard, Cambridge Security
Ammons, Tony	Montgomery County Police	Vehicle Monitor, Landon School
Assaihgne, Arefaine	Montgomery County Police	Page, Telesec Corestaff
Banda, JoAnne	DHHS	Staff Nurse, Unique Nurses
Barber, Jeanette	Sheriff's Office	Security Guard, McDonalds
Barnes, James	Montgomery County Police	Security Officer, Casey Management
Barr, Shon	Montgomery County Police	Security Guard, Management Group
Baskot, Michael	Montgomery County Police	Security Guard, Cambridge Security
Baskot, Michael	Montgomery County Police	Security Guard, Montgomery Investigative
Baughman, Leland	Montgomery County Police	Security Guard, International Gem & Jewelry
Baxter, James	Sheriff's Office	Security Guard, Bowl America
Baxter, Jim	Sheriff's Office	Security Officer, McDonalds
Bayles, William	Fire & Rescue Services	Firefighter, Laurel Volunteer Fire Dept.
Bayles, William	Montgomery County Police	Technician, Shady Grove
Beam, Suzanne	Montgomery County Police	Security Guard, Stoneridge Condo Assoc.
Bean, John	Sheriff's Office	Security Officer, Burning Tree Golf Club
Berkheimer, Dave	Montgomery County Police	Security Guard, Grand Billiard Club
Bingman, Stacey	Montgomery County Police	Security Guard, Washington Hebrew
Bingman, Stacey	Montgomery County Police	Security Guard, Magruders Grocery
Bingman, Stacey	Montgomery County Police	Security Officer, Proactive Special Security
Blackstone, Marq.	Montgomery County Police	Security Officer, Grady Management
Bledsoe, Michael	Montgomery County Police	Security Officer, Grady Management
Blumgart, Daniel	Montgomery County Police	Security Officer, Montgomery Investigative
Bonanno, Robert	Sheriff's Office	Security Officer, Bel Pre Venture
Bottenus, Randolph	Montgomery County Police	Security Officer, Stoneridge Homeowners
Brown, Dana	Montgomery County Police	Security Officer, Grand Billiard Club
Brown, Earl	Montgomery County Police	Security Guard, Chambers Management
Brown, Frank	Montgomery County Police	Landscaper, Brown & Brown Landscaping
Brown, Frank	Montgomery County Police	Security Guard, Hebrew Academy
Brown, Frank	Montgomery County Police	Security Officer, Lerner Corp.
Brown, Frank	Montgomery County Police	Security Officer, Manugistics

Brown, Scott	Montgomery County Police	Security Officer, Northwest Park Apts.
Budzinski, William	Sheriff's Office	Security Officer, McDonalds
Bunnell, Susan	Montgomery County Police	Security Guard, Manugistics
Bunting, Eric	Montgomery County Police	Security Officer, Restorante Felicita
Burgess, Dan	Montgomery County Police	Security Officer, Hebrew Academy
Burgess, Michael	Montgomery County Police	Security Guard, Progress Club
Burgess, Michael	Montgomery County Police	Security Officer, Courtyard by Marriott
Burgess, Michael	Montgomery County Police	Traffic Control Officer, Atlantic Security
Burke, Michael	Montgomery County Police	Vehicle Monitor, Landon School
Burnett, Eric	Montgomery County Police	Security Guard, Cambridge Security
Burnett, Eric	Montgomery County Police	Security Guard, DarCars Motor Co.
Burnett, Eric	Montgomery County Police	Security Guard, Cambridge Security
Burnett, Eric	Montgomery County Police	Security Officer, Federal Realty
Burnett, Eric	Montgomery County Police	Security Officer, Federal Realty
Burton, Eve	Dept. of Public Libraries	Lecturer, Univery of Maryland
Butler, Clayton	Dept. of Public Works	Document Analyst, Arent, Fox, Kintner
Butts, Ronald	Montgomery County Police	Security Officer, Magruders
Calantonio, Chris	Montgomery County Police	Security Officer, McDonalds
Cassels, Robert	Montgomery County Police	Security Officer, McDonalds
Clagett, Mary Beth	Montgomery County Police	Security Officer, Jeepers
Clarke, Blaine	DHHS	Clinical Social Worker, Town Cntr. Psychiatric
Cobb, Douglas	Montgomery County Police	Security Officer, Burlington Coat Factory
Collett, Dale	Dept. of Public Works	Truck Driver, L&W Trucking
Collins, Donald	Sheriff's Office	Security Officer, McDonalds
Cook, Robert	Montgomery County Police	Security Officer, Montgomery Investigative
Cook, Robert	Montgomery County Police	Security Officer, Hechingers
Cooke, Torrie	Montgomery County Police	Security Officer, WRIT
Cooke, Torrie	Montgomery County Police	Security Officer, JBG Properties
Cowan, Donnell	Montgomery County Police	Traffic Control Assistant, Woods Academy
Cowan, Donnell	Montgomery County Police	Security Officer, JBG Properties
Cox, Donald	Montgomery County Police	Security Officer, Montgomery Security Serv.
Cox, Patricia	Montgomery County Police	Aerobic Instructor, Upper County YMCA
Croom, Jacques	Montgomery County Police	Musician , Raising Cain Band
Cunningham, Rich	Montgomery County Police	Security Officer, Grady Management
Currie, Adam	Montgomery County Police	Security Officer, Hebrew Academy
D'Albora, John	Montgomery County Police	Security Officer, Federal Realty Investment
Dalacruz, David	Montgomery County Police	Security Officer, Restorante Felicita
DAlbora, Thomas	Montgomery County Police	Security Officer, Casey Management
Daniel, Edwin	Montgomery County Police	Security Officer, Magruders
DaSilva, Louvenna	Montgomery County Police	Security Officer, Federal Realty
De Carlo, Steven	Montgomery County Police	Watchman, Eunice Shreiver Estate
De Carlo, Steven	Montgomery County Police	Security Guard, Grand Billiard Club
Del Rio, Cecilla	Montgomery County Police	Psychotherapist, self-employed
Diffenderfer, Ken	Fire & Rescue Services	Driver, Longmeadow Volunteer Fire Dept.
DiGiorgio, Vincent	Fire & Rescue Services	President, Digital Lighting
Dillman, Brian	Montgomery County Police	Security Officer, JBG Properties

Dilman, Brian	Montgomery County Police	Security Officer, Grady Management
Dizelos, Angela	Commun. Use of Public Facil.	Enumerator, U.S. Census Bureau
Dizelos, Angela	Commun. Use of Public Facil.	Distributor of food, Market Day
Dizelos, Angela	Community Use of Pub. Facil.	Enumerator, US Census Bureau
Dominick, Keith	Fire & Rescue	Emergency Calls, Frederick County Gov.
Dominick, Meredith	Montgomery County Police	Sales Consultant, The Longaberger
Dommel, Lorraine	Montgomery County Police	Security Officer, Duffie, Inc.
Dommel, Lorraine	Montgomery County Police	Security Officer, WRIT
Dommel, Lorraine	Montgomery County Police	Security Officer, JBG Properties
Dommel, Thomas	Montgomery County Police	Security Guard, Montgomery Investigative
Dommel, Thomas	Montgomery County Police	Security Officer, JBG Properties
Doyle, Francis	Fire & Rescue Services	Guard, Burns International Security
Doyle, Mary	Montgomery County Police	Salesperson, Excel Communications
Edghill, Anthony	Montgomery County Police	Coach, Bullis School
Elkin, Ari	Montgomery County Police	Security Officer, Charles E. Smith
Elkin, Ari	Montgomery County Police	Security Officer, Prentis Properties
Elston, Kenneth	Montgomery County Police	Security Officer, Fenguard Security
Emanuel, Antonio	Montgomery County Police	Security Guard, Cambridge Security Serv.
Evans, Lisa	Montgomery County Police	Delivery Person, Dominos Pizza
Ewart, Jeffrey	Fire & Rescue Services	Paramedic, Lifestar Response
Ewart, Jeffrey	Fire & Rescue Services	Firefighter, Berwyn Hts. Volunteer Fire
Falcinelli, David	Montgomery County Police	Security Person, Winston Churchill H.S.
Farrar, Sharon	Montgomery County Police	Therapist, Olney Psychiatric
Felsen, Heather	DHHS	Site Coordinator, Pre-Release Center
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Fink, Sherri	Sheriff's Office	Security Officer, McDonalds
Flood, Thomas	Montgomery County Police	Security Officer, Federal Realty
Floyd, Audra	Dept. of Corrections	Childcare Provider, YMCA of Gaithersburg
Fones, Frank	Montgomery County Police	Security Officer, Indian Spring Country Club
Ford, Brian	Montgomery County Police	Security Guard, FenGuard Security
Francisco, Jaramillo	Fire & Rescue Services	Firefighter, Chillum-Adelphi Volunteer Fire
Freis, William	Montgomery County Police	Security Guard, Prentiss Properties
Fumagali, Kathy	Montgomery County Police	Security Guard, Charles E. Smith
Gaffney, Joseph	DHHS	Psychologist, Town Center Psychiatric
Garland, Chris	Montgomery County Police	Security Officer, Burlington Coat Factory
Gerogestone, Gert	Fire & Rescue Services	Telecommunications Operator, Emerg. Mngmt.
Gibson, Sean	DHHS	Instructor, Dept. of Recreation
Gindlesperger, Er	Sheriff's Office	Security Officer, Frugal Fannies
Gloster, Terry	Montgomery County Police	Security Guard, Raimondi Kern & Co.
Gloster, Terry	Montgomery County Police	Security Guard, A&R Group
Gloster, Terry	Montgomery County Police	Security Guard, STF Productions
Goldstein, Scott	Fire & Rescue Services	Project Officer, Nat. Assoc. for Search
Gomes, Scarlet	Office of Human Resources	Service Specialist, George Wash. Health Plan
Goudarznia, Fred	DHHS	Clinical Supervisor, LCPC candidates
Grant, Zachary	Sheriff's Office	Security Officer, American Multi Cinema
Gray, Eugene	Montgomery County Police	Security Guard, Marriott/Courtyard



ETHICS
COMMISSION

Commissioners
Kenneth C. Jackson
Chair

Laurie B. Horvitz
Alastair McArthur
Lee Petty
Walter Scheiber

Commission Staff
Barbara McNally
Executive Secretary
Lynn Launer
Administrative Assistant

February 10, 1999

The Honorable Derick P. Berlage
10007 Leafy Avenue
Silver Spring, MD 20910-1021

Dear Council Member Berlage:

The Ethics Commission has received and considered your January 20, 1999, request for an advisory opinion and approval of certain employment outside county government. In particular, you have asked the Commission to approve your employment as a permanent, part-time employee with a Washington, D.C. private law firm.

You also have asked for the Commission's advice, should it approve this outside employment, "concerning what biographical information may be published about [you]." In particular, you have asked if "it is acceptable for the firm to note, along with your other professional and legal accomplishments, the fact that [you are] a member of the County Council?"

FACTS PRESENTED

Your letter presents the following material facts:

1. You currently work for the firm as a contract attorney.
2. The firm does not represent clients before the Montgomery County Council, and does not anticipate doing so in the future. Should the firm ever undertake such representation, you would recuse yourself from discussing and voting on the matter as a Council member. Neither would you discuss such a matter with another attorney in the firm.

3. You will not practice or appear before any agency of Montgomery County Government. You will, however, appear before courts of law located in Montgomery County, such as the Circuit Court for Montgomery County and the District Court of Maryland.

APPLICABLE LAW

Your request implicates several provisions of the Montgomery County Public Ethics Law (Chapter 19A of the Montgomery County Code) and Ethics Commission Regulation 32-97.

1. “*Other Employment*” Provisions.

- a. The Public Ethics Law. Section 19A-12 of the Public Ethics Law contains a number of general and specific restrictions on the “other employment” of public employees, including members of the County Council. Subsection (a) generally prohibits a public employee, including a member of the County Council from engaging in any “other employment” unless the employment is approved by the Commission.¹ If the Commission approves the “other employment,” it may impose conditions on its approval. *Id.* In pertinent part, subsection (b) specifically restricts a public employee from holding any employment relationship that would impair the impartiality and independence of judgment of the public employee, unless the Commission grants a waiver under 19A-8(b). Subsection (c)(4) exempts elected public employees from these restrictions “in regard to employment held at the time of election, if the employment is disclosed to the Board of Supervisors of Elections before the election.” After receiving a written request and subject to statutory standards, the Commission also may waive any of these provisions. §19A-8.

- b. The Outside Employment Regulation. The “other employment” provisions of the Public Ethics Law are supplemented by an Outside Employment Regulation of the Commission.² In pertinent part, the Regulation prohibits county employees, including members of the County Council,³ from being “employed by or having an economic interest in any business subject to the authority of or doing business with the county agency or department for which they work.” ¶4.4. the Regulation also authorizes the waiver of its provisions in accordance with the criteria established in §19A-8 of the Code. ¶4.13.

¹ The Public Ethics Law defines the term *public employee* to include a member of the County Council, and *employment* or *employ* to mean “engaging in an activity for compensation.” §§19A-4 (g) and (m) (l)

² The current regulation is Regulation 32-97, which was approved by County Council Resolution 13-1134.

³ For the purposes of this Regulation, *county employee* means “[a]ny person, including elected or appointed officials (unless excepted in context) who is compensated in whole or in part by the Montgomery County Government or the Revenue Authority, Housing Opportunities Commission, Board of License Commissioners, independent fire department or rescue squads.” ¶2.2.

2. *Conflicts-of-Interest Provisions.*

The conflicts-of-interest provisions of the Public Ethics Law are set forth at §19A-11(a). In pertinent part, these provisions prohibit a public employee from participating as a public employee in, among other things.

- (1) any matter that affects, in a manner distinct from its effect on the public generally, any business in which the public employee has an economic interest;
- (2) any matter if he or she knows or reasonably should know that a party to matter is a business in which the public employee has an economic interest as an employee; or
- (3) any business or individual that is a party to an existing contract with the public employee, if the contract could reasonably result in a conflict between private interests and official duties;
- (4) any debtor of the public employee if the debtor can directly and substantially affect an economic interest of the public employee.

These provisions also prohibit a public employee from: (1) intentionally using the prestige of this or her office for private gain or the gain of another; (2) disclosing confidential information relating to or maintained by a County agency that is not available to the public; or (3) using confidential information for personal gain or the gain of another. §§19A-14 (a) and 19A-15 (a).

After receiving a written request, the Commission may waive any of these provisions if certain standards are met. §19A-8.

3. *Underlying Policy and Liberal Construction of the Public Ethics Law.*

Both the “other employment” and “conflict-of-interest” provisions are expressly intended to be “liberally construed” to accomplish the policy goals of the Public Ethics Law. §19A-2 (d). Those goals are embodied in “legislative findings and statements of policy” set forth at subsections (a), (b) and (c) of §19A-2.

- (a) Our system of representative government depends in part on the people maintaining the highest trust in their officials and employees. The people have a right to public officials and employees who are impartial and use independent judgment.
- (b) The confidence and trust of the people erodes when the conduct of County business subject to improper influence or even the appearance of improper influence.

- (c) To guard against improper influence, the Council enacts this public ethics law. This law sets comprehensive standards for the conduct of County business and requires public employees to disclose information about their financial affairs.

Ethics Law violations are subject to various civil and criminal sanctions. §19A-27-32.

ANALYSIS

The conflicts-of-interest provisions of the Montgomery County Public Ethics Law do not limit the independent activities of the outside employers of individuals who also are public employees.¹ Therefore, your membership on the County Council does not—for Montgomery County Ethics Law purposes—prevent any member or other employee of the firm from representing clients before the Montgomery County Council or any agency or official of the County.

Nor do the conflicts-of-interest provisions limit your activities as a private employee. Your activities as a public employee, however, are limited by those provisions. You may not participate as a Council member in any matter if you know or reasonably should know that the firm is a party to the matter or represents a party to the matter. For these purposes, participation includes more than just voting. It reaches any action of any kind as a Council member. For example, it not only precludes you from participating in a hearing on the matter, but also prohibits you from discussing any aspect of the matter with Council colleagues, staff or any other Montgomery County official or employee. Your recusal from the matter must be complete and total.

The conflicts-of-interest provisions of the Public Ethics Law also prohibit you from “intentionally using the prestige of your office for private gain or the gain of another,”² and from disclosing confidential information (relating to our maintained by a County agency) that is not available to the public or using confidential information for personal gain or the gain of another.

Although the conflicts-of-interest provisions do not limit your activities as a private employee, the “other employment” provisions of the Public Ethics Law do. In particular, these provisions prohibit you from engaging in any “other employment” unless it is approved by the Commission, and that approval may contain conditions.

¹ §19A-12 (d) prohibits a person from knowingly employing a public employee unless the Commission approves it or the other employment restrictions do not apply, and §19A-14 (f) prohibits a person from influencing or attempting to influence a public employee to violate the Public Ethics Law.

² “Performing usual and customary constituent services, without additional compensation, is not prohibited by this subsection.”

The Ethics Regulation, in addition, mandates that county employees not be employed or have an economic interest in any business doing business with the county agency or department for which they work. At first blush, this prohibition might appear to be broad enough to prohibit a member of County Council from being employed by a law firm that represents clients before the County Council. The phrase “doing business with” is, however, defined for the purposes of the Public Ethics Law. §19A-4 (e) defines the term mean:

- (1) being a party with a County agency to a transaction that involves at least \$1,000 during a year;
- (2) negotiating a transaction with a County agency that involves at least \$1,000 during a year; or
- (3) submitting a bid or proposal to a County agency for a transaction that involves at least \$1,000 during a year.

This definition limits the phrase to *transactions* with county agencies, representing clients before the County Council with respect to pending legislation or the Council’s authority as the District Council is not “doing business with” the County Council as that phrase is defined for the purposes of the Public Ethics Law. Therefore, your employment by the new firm is not prohibited by the Regulation.

In sum, in order to engage in the employment relationship you have described, you must: (1) obtain the approval of the Commission; (2) comply with any conditions the Commission places on its approval of that “other” employment; and (3) refrain from the activities prohibited by the conflicts-of-interest provisions of the Public Ethics Law.

OTHER EMPLOYMENT APPROVAL

Based on the facts as presented in your letter, the Commission has approved your employment by the firm in the capacity stated, subject to: (1) the attached General Supplemental Conditions; and (2) the following special conditions:

Special Conditions

1. You must not participate, as an employee of the firm, in any *matter* (litigation, advice, research or other kind) involving:
 - (a) Montgomery County, Maryland
 - (b) any officer, employee or unit of Montgomery County, Maryland; or
 - (c) any other public officer, employee, agent or agency funded, in whole or in part, by Montgomery County, Maryland.¹

¹ This restriction does not apply to litigation in the Circuit Court for Montgomery County not involving (1) Montgomery County, Maryland; (2) any officer, employee, agent or unit of Montgomery County, Maryland; or (3) any other public officer, employee, agent or agency funded, in whole or in part, by Montgomery County, Maryland.

2. You must not advise, represent or otherwise participate in providing any legal service to or on behalf of a client on any matter at the same time the firm is advising, representing or otherwise providing legal services to or on behalf of the client in connection with any matter that is or will come before the County Council or any County, Maryland;¹
3. Except as provided in §19A-11 (b) (1) of the Public Ethics Law,² you may not participate as a county employee in any matter that affects the firm, either directly as a business entity or indirectly in its representation of a client, unless you apply for and receive a waiver from the Commission with respect to the particular matter;³ and
4. You must require the firm to erect appropriate administrative “barriers” that effectively insulate you from every matter in which your participation is prohibited by one or more of these special conditions.
5. In biographical information published about you, the firm may note, along with your other professional and legal accomplishments, the fact that you are a member of the County Council. However, that fact must be limited to truly biographical information and may not be phrased to suggest that clients of the firm will benefit from your membership on the Council.

¹ This special condition does not prohibit you from providing legal services on “non-county-related matters” to or on behalf of clients whom the firm is advising, representing or otherwise serving on a “county-related matter” (i.e., before a county official, employee or unit not in the legislative branch of the Montgomery County government, or any bi-county or state official, employee, or agency funded, in whole or in part, by Montgomery County, Maryland) so long as the services you provide are wholly unrelated to the “county” matters being handled by the firm.

² §19A-11 (b) (1) permits a disqualified public employee to act “[i]f a disqualification under subsection (a) leaves less than a quorum capable of acting, or if the disqualified public employee is required by law to act or is the only person authorized to act, and the disqualified public employee...discloses the nature and circumstances of the conflict.”

³ This prohibition does not apply to matters before the state courts in Montgomery County (i.e., the Circuit Court for Montgomery County and the District Court of Maryland in Montgomery County) in which neither County nor any agency, officer, employee or other agent of the County is a party.

This approval of the “other employment” described in your inquiry does not constitute a waiver for the purposes of the conflicts-of-interest provisions of the Public Ethics Law or for any other purpose.¹ Thus, you must continue to comply with all applicable provisions of the Public Ethics Law, including, by way of example but not limitation, the prohibition of the intentional use of the prestige of your office for your private gain or that of another (§19A-14) and the prohibition of the disclosure of confidential information (§19A-15). If particular circumstances arise that require a waiver and appear to meet the appropriate standard, you may request a waiver.²

Very truly yours,

Kenneth C. Jackson, Sr.
Chair

¹ As generally approved and condition, you new relationship with the firm does not require a waiver of §19A-12 (b) unless circumstances arise that, notwithstanding the general and special conditions and restrictions, would impair your impartiality and independence with regard to a particular matter.

² See, e.g., §19A-8 of the Public Ethics Law and ¶4.13 of Regulation 32-97.

Appendix C
Outside Employment Requests

Abrahams David	Office of County Attorney	Settlement Officer, American Title Assoc.
Adams, Norman	Sheriff's Office	Security, Hechingers
Akkala, Steven	Fire & Rescue Services	Lifeguard, B-CC YMCA
Akkala, Steven	Fire & Rescue Services	Lifeguard, City of Rockville
Alexander, Brenda	Montgomery County Police	Watchman, OakFair Townhome Assoc.
Alexander, Brenda	Montgomery County Police	Security Officer, DarCars Motors
Alexander, Brenda	Montgomery County Police	Security Officer, Grady Management
Allen, Harold	Montgomery County Police	Security Officer, Landon School
Ambrose, Pamela	Dept. of Recreation	Piano Teacher, Self-Employed
Ammons, Tony	Montgomery County Police	Security Guard, Kemp Mill Synagogue
Ammons, Tony	Montgomery County Police	Security Guard, Ruby Tuesdays
Ammons, Tony	Montgomery County Police	Security Guard, Cambridge Security
Ammons, Tony	Montgomery County Police	Vehicle Monitor, Landon School
Assaihgne, Arefaine	Montgomery County Police	Page, Telesec Corestaff
Banda, JoAnne	DHHS	Staff Nurse, Unique Nurses
Barber, Jeanette	Sheriff's Office	Security Guard, McDonalds
Barnes, James	Montgomery County Police	Security Officer, Casey Management
Barr, Shon	Montgomery County Police	Security Guard, Management Group
Baskot, Michael	Montgomery County Police	Security Guard, Cambridge Security
Baskot, Michael	Montgomery County Police	Security Guard, Montgomery Investigative
Baughman, Leland	Montgomery County Police	Security Guard, International Gem & Jewelry
Baxter, James	Sheriff's Office	Security Guard, Bowl America
Baxter, Jim	Sheriff's Office	Security Officer, McDonalds
Bayles, William	Fire & Rescue Services	Firefighter, Laurel Volunteer Fire Dept.
Bayles, William	Montgomery County Police	Technician, Shady Grove
Beam, Suzanne	Montgomery County Police	Security Guard, Stoneridge Condo Assoc.
Bean, John	Sheriff's Office	Security Officer, Burning Tree Golf Club
Berkheimer, Dave	Montgomery County Police	Security Guard, Grand Billiard Club
Bingman, Stacey	Montgomery County Police	Security Guard, Washington Hebrew
Bingman, Stacey	Montgomery County Police	Security Guard, Magruders Grocery
Bingman, Stacey	Montgomery County Police	Security Officer, Proactive Special Security
Blackstone, Marq.	Montgomery County Police	Security Officer, Grady Management
Bledsoe, Michael	Montgomery County Police	Security Officer, Grady Management
Blumgart, Daniel	Montgomery County Police	Security Officer, Montgomery Investigative
Bonanno, Robert	Sheriff's Office	Security Officer, Bel Pre Venture
Bottenus, Randolph	Montgomery County Police	Security Officer, Stoneridge Homeowners
Brown, Dana	Montgomery County Police	Security Officer, Grand Billiard Club
Brown, Earl	Montgomery County Police	Security Guard, Chambers Management

Brown, Scott	Montgomery County Police	Security Officer, Northwest Park Apts.
Budzenski, William	Sheriff's Office	Security Officer, McDonalds
Bunnell, Susan	Montgomery County Police	Security Guard, Manugistics
Bunting, Eric	Montgomery County Police	Security Officer, Restorante Felicita
Burgess, Dan	Montgomery County Police	Security Officer, Hebrew Academy
Burgess, Michael	Montgomery County Police	Security Guard, Progress Club
Burgess, Michael	Montgomery County Police	Security Officer, Courtyard by Marriott
Burgess, Michael	Montgomery County Police	Traffic Control Officer, Atlantic Security
Burke, Michael	Montgomery County Police	Vehicle Monitor, Landon School
Burnett, Eric	Montgomery County Police	Security Guard, Cambridge Security
Burnett, Eric	Montgomery County Police	Security Guard, DarCars Motor Co.
Burnett, Eric	Montgomery County Police	Security Guard, Cambridge Security
Burnett, Eric	Montgomery County Police	Security Officer, Federal Realty
Burnett, Eric	Montgomery County Police	Security Officer, Federal Realty
Burton, Eve	Dept. of Public Libraries	Lecturer, Univery of Maryland
Butler, Clayton	Dept. of Public Works	Document Analyst, Arent, Fox, Kintner
Butts, Ronald	Montgomery County Police	Security Officer, Magruders
Calantonio, Chris	Montgomery County Police	Security Officer, McDonalds
Cassels, Robert	Montgomery County Police	Security Officer, McDonalds
Clagett, Mary Beth	Montgomery County Police	Security Officer, Jeepers
Clarke, Blaine	DHHS	Clinical Social Worker, Town Cntr. Psychiatric
Cobb, Douglas	Montgomery County Police	Security Officer, Burlington Coat Factory
Collett, Dale	Dept. of Public Works	Truck Driver, L&W Trucking
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Cook, Robert	Montgomery County Police	Security Officer, Hechingers
Cooke, Torrie	Montgomery County Police	Security Officer, WRIT
Cooke, Torrie	Montgomery County Police	Security Officer, JBG Properties
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Cowan, Donnell	Montgomery County Police	Security Officer, JBG Properties
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Cox, Patricia	Montgomery County Police	Aerobic Instructor, Upper County YMCA
Croom, Jacques	Montgomery County Police	Musician , Raising Cain Band
Cunningham, Rich	Montgomery County Police	Security Officer, Grady Management
Currie, Adam	Montgomery County Police	Security Officer, Hebrew Academy
D'Albora, John	Montgomery County Police	Security Officer, Federal Realty Investment
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DAlbora, Thomas	Montgomery County Police	Security Officer, Casey Management
Daniel, Edwin	Montgomery County Police	Security Officer, Magruders
DaSilva, Louvenna	Montgomery County Police	Security Officer, Federal Realty
De Carlo, Steven	Montgomery County Police	Watchman, Eunice Shreiver Estate

Dilman, Brian	Montgomery County Police	Security Officer, Grady Management
Dizelos, Angela	Commun. Use of Public Facil.	Enumerator, U.S. Census Bureau
Dizelos, Angela	Commun. Use of Public Facil.	Distributor of food, Market Day
Dizelos, Angela	Community Use of Pub. Facil.	Enumerator, US Census Bureau
Dominick, Keith	Fire & Rescue	Emergency Calls, Frederick County Gov.
Dominick, Meredith	Montgomery County Police	Sales Consultant, The Longaberger
Dommel, Lorraine	Montgomery County Police	Security Officer, Duffie, Inc.
Dommel, Lorraine	Montgomery County Police	Security Officer, WRIT
Dommel, Lorraine	Montgomery County Police	Security Officer, JBG Properties
Dommel, Thomas	Montgomery County Police	Security Guard, Montgomery Investigative
Dommel, Thomas	Montgomery County Police	Security Officer, JBG Properties
Doyle, Francis	Fire & Rescue Services	Guard, Burns International Security
Doyle, Mary	Montgomery County Police	Salesperson, Excel Communications
Edghill, Anthony	Montgomery County Police	Coach, Bullis School
Elkin, Ari	Montgomery County Police	Security Officer, Charles E. Smith
Elkin, Ari	Montgomery County Police	Security Officer, Prentis Properties
Elston, Kenneth	Montgomery County Police	Security Officer, Fenguard Security
Emanuel, Antonio	Montgomery County Police	Security Guard, Cambridge Security Serv.
Evans, Lisa	Montgomery County Police	Delivery Person, Dominos Pizza
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Felsen, Heather	DHHS	Site Coordinator, Council on Governments
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Floyd, Audra	Dept. of Corrections	Childcare Provider, YMCA of Gaithersburg
Fones, Frank	Montgomery County Police	Security Officer, Indian Spring Country Club
Ford, Brian	Montgomery County Police	Security Guard, FenGuard Security
Francisco, Jaramillo	Fire & Rescue Services	Firefighter, Chillum-Adelphi Volunteer Fire
Freis, William	Montgomery County Police	Security Guard, Prentiss Properties
Fumagali, Kathy	Montgomery County Police	Security Guard, Charles E. Smith
Gaffney, Joseph	DHHS	Psychologist, Town Center Psychiatric
Garland, Chris	Montgomery County Police	Security Officer, Burlington Coat Factory
Gerogestone, Gert	Fire & Rescue Services	Telecommunications Operator, Emerg. Mngmt.
Gibson, Sean	DHHS	Instructor, Dept. of Recreation
Gindlesperger, Er	Sheriff's Office	Security Officer, Frugal Fannies
Gloster, Terry	Montgomery County Police	Security Guard, Raimondi Kern & Co.
Gloster, Terry	Montgomery County Police	Security Guard, A&R Group
Gloster, Terry	Montgomery County Police	Security Guard, STF Productions
Goldstein, Scott	Fire & Rescue Services	Project Officer, Nat. Assoc. for Search
Gomes, Scarlet	Office of Human Resources	Service Specialist. Georae Wash. Health Plan

alons, Matthew	Fire & Rescue Services	Firefighter, Frederick County Fire & Rescue
earney, Brent	Montgomery County Police	Security Officer, Montgomery Investigative
earney, Robert	Montgomery County Police	Security Officer, Fireside Condominium
erich, Colleen	Montgomery County Police	Security Officer, McDonalds
err, Allan	Montgomery County Police	Security Officer, Beth Sholom Congregation
essler, Richard	Montgomery County Police	Security Guard, Good Counsel H.S.
essler, Richard	Montgomery County Police	Instructor, Hamilton Trading Group
hatri, Sheila	Dept. of Economic Develop.	Attorney, Self-employed
ing, John	Montgomery County Police	Security Officer, Trammell Crow
itner, Scott	Fire & Rescue Services	Firefighter, CV Hose Co.
nott, Gregory	Montgomery County Police	Security Officer, Casey Management
nowlden, William	Montgomery County Police	Security Officer, Lerner Corp.
nowlden, William	Montgomery County Police	Security Officer, Federal Realty Investment
orngay, Demetri	Montgomery County Police	Speaker, Nero's Publishing
ruhm, Richard	Montgomery County Police	Security Officer, Charles E. Smith
adany, Robert	Montgomery County Police	Security Officer, Darcar Motors
ankford, Ivan	Montgomery County Police	Security Guard, Party City
ankford, Ivan	Montgomery County Police	Security Officer, Magruders
antham, James	Montgomery County Police	Security Officer, Grady Management
apsley, Cathleen	Montgomery County Police	Security Officer, Mont. Co. Revenue Authority
auret, Craig	Fire & Rescue Services	Administrative Member, Sandy Spring
azarus, Mark	Montgomery County Police	Security Guard, Cambridge Security Serv.
azarus, Mark	Montgomery County Police	Security Officer, Atlantic Security
ee, Gil	Montgomery County Police	Security Officer, Jaffe Group
ee, Sung	Sheriff's Office	Security Officer, McDonalds'
ee, Teena	Montgomery County Police	Security Guard, Montgomery Investigative
ee, William	Montgomery County Police	Security Officer, Stoneridge Homeowners
ehman, Robert	Sheriff's Office	Security Officer, McDonalds
ewis, Gary	Montgomery County Police	Security Officer, Charles E. Smith
ewis, Mark	Montgomery County Police	Security Guard, Cambridge Security Serv.
ewis, Mark	Montgomery County Police	Security Officer, Ruby Tuesdays
ewis, Mark	Montgomery County Police	Security Officer, Vineyards Condominium
ewis, Robin	Sheriff's Office	Security Officer, G Street Fabrics
illey, Marc	Dept. of Recreation	Tennis Instructor, Montgomery College
iphak, Michael	Dept. of Fire & Rescue	Fire Systems Repairman, Maryland Fire
iptak, Michael	Fire & Rescue Services	Housing Inspector, City of Hyattsville
iquorie, Paul	Montgomery County Police	Security Person, Ruby Tuesdays
ong, Judith	Dept. of Corrections	Secretary, Lydon & Associates
oudermilk, Charles	Montgomery County Police	Security Guard, Progress Club
oudermilk, Charles	Montgomery County Police	Traffic Control Officer, Atlantic Security
magruder, Vince	Montgomery County Police	Security Officer, McDonalds

Marcus, Charles	Montgomery County Police	Security Officer, Grand Billiard Club
Marston, Kevin	Montgomery County Police	Security Guard, Wheaton Plaza Four
Martin, Nicole	DHHS	Charge Nurse, Devereux Children's Cntr.
Martinez, Fernando	Montgomery County Police	Security Officer, Park Inn International
Massey, Jill	Dept. of Public Libraries	Receptionist, Professionals Title & Escrow
Matthews, Michael	Montgomery County Police	Contract Special Investigator, Self-employed
Matthews, Stephen	Montgomery County Police	Security Officer, First Class Security
Maxson, Ronnie	Montgomery County Police	Commercial Cleaning, Diversified Service
May, Joan	DHHS	Reviewer, Urban Institute
Mcatee, Frank	Montgomery County Police	Security Officer, Peppertree Farm Apts.
McCallum, Sonya	Montgomery County Police	Security Guard, Montgomery Investigative
McCallum, Sonya	Montgomery County Police	Security Officer, Atlantic Security Professionals
McCallum, Sonya	Montgomery County Police	Security Officer, The Management Group
McCollum, Angela	Montgomery County Police	Surveillance Guard, FenGuard Security
McCormick, James	Montgomery County Police	Security Officer, TAC
McGaha, John	Montgomery County Police	Security Officer, Casey Management
McHenry, Quinton	Dept. of Public Works	Phone Agent, Ticketmaster
McMurtray, Frank	Montgomery County Police	Security Officer, Proactive Security
McNerney, Patrick	Montgomery County Police	Security Officer, Shrine of St. Jude
Medlin, Jamie	Montgomery County Police	Security Officer, Stoneridge Condo Assoc.
Medlin, Jamie	Montgomery County Police	Security Officer, Chambers Management
Medlin, Jamie	Montgomery County Police	Security Officer, JBG Properties
Mellott, Alanna	Montgomery County Police	Security Guard, Good Counsel H.S.
Melott, Troy	Montgomery County Police	Security Officer, Fenguard Security
Mendez, Gabriel	Montgomery County Police	Security Guard, Montgomery Investigative
Mengedoht, Brand.	Montgomery County Police	Security Officer, Cambridge Security
Miguele, Catalina	Fire & Rescue Services	Detailer, Thrifty Iron Works
Mills, Richard	Montgomery County Police	Security Officer, FenGuard Security
Mills, Roslyn	Montgomery County Police	Security Officer, Ventura Townhome & Condo
Mills, Roslyn	Montgomery County Police	Security Officer, Dar Car Motors
Mills, Roslyn	Montgomery County Police	Security Officer, Grady Management
Mohardt, Neil	Montgomery County Police	Security Guard, Montgomery Investigative
Montgomery, Wil	Montgomery County Police	Security Officer, Kehilat Shalom
Moore, Farris	Montgomery County Police	Security Officer, G Street Fabrics
Moore, Richard	Montgomery County Police	Instructor, MVA
Moriarty, John	Montgomery County Police	Security Officer, Montgomery Investigative
Morse, Naomi	Dept. of Public Libraries	Reference Assistant, Holocaust Museum
Moser, Robert	Montgomery County Police	Security Officer, International Gem & Jewelry
Muollo, Tod	Montgomery County Police	Security Guard, Hebrew Academy
Murphy, Maureen	Montgomery County Police	Security Officer, Mont. Co. Revenue Authority
Najafi, David	Montgomery County Police	Security Officer, Montgomery Investigative
Najafi, David	Montgomery County Police	Security Officer, Federal Realty Investment
Neuforfer, Linda	Montgomery County Police	Security Guard, Loews Cineplex
Neuforfer, Linda	Montgomery County Police	Consultant, Neuforfer Consulting

Marcus, Charles	Montgomery County Police	Security Officer, Grand Billiard Club
Marston, Kevin	Montgomery County Police	Security Guard, Wheaton Plaza Four
Martin, Nicole	DHHS	Charge Nurse, Devereux Children's Cntr.
Martinez, Fernando	Montgomery County Police	Security Officer, Park Inn International
Massey, Jill	Dept. of Public Libraries	Receptionist, Professionals Title & Escrow
Matthews, Michael	Montgomery County Police	Contract Special Investigator, Self-employed
Matthews, Stephen	Montgomery County Police	Security Officer, First Class Security
Maxson, Ronnie	Montgomery County Police	Commercial Cleaning, Diversified Service
May, Joan	DHHS	Reviewer, Urban Institute
Mcatee, Frank	Montgomery County Police	Security Officer, Peppertree Farm Apts.
McCallum, Sonya	Montgomery County Police	Security Guard, Montgomery Investigative
McCallum, Sonya	Montgomery County Police	Security Officer, Atlantic Security Professionals
McCallum, Sonya	Montgomery County Police	Security Officer, The Management Group
McCollum, Angela	Montgomery County Police	Surveillance Guard, FenGuard Security
McCormick, James	Montgomery County Police	Security Officer, TAC
McGaha, John	Montgomery County Police	Security Officer, Casey Management
McHenry, Quinton	Dept. of Public Works	Phone Agent, Ticketmaster
McMurtray, Frank	Montgomery County Police	Security Officer, Proactive Security
McNerney, Patrick	Montgomery County Police	Security Officer, Shrine of St. Jude
Medlin, Jamie	Montgomery County Police	Security Officer, Stoneridge Condo Assoc.
Medlin, Jamie	Montgomery County Police	Security Officer, Chambers Management
Medlin, Jamie	Montgomery County Police	Security Officer, JBG Properties
Mellott, Alanna	Montgomery County Police	Security Guard, Good Counsel H.S.
Melott, Troy	Montgomery County Police	Security Officer, Fenguard Security
Mendez, Gabriel	Montgomery County Police	Security Guard, Montgomery Investigative
Mengedoht, Brand.	Montgomery County Police	Security Officer, Cambridge Security
Miguele, Catalina	Fire & Rescue Services	Detailer, Thrifty Iron Works
Mills, Richard	Montgomery County Police	Security Officer, FenGuard Security
Mills, Roslyn	Montgomery County Police	Security Officer, Ventura Townhome & Condo
Mills, Roslyn	Montgomery County Police	Security Officer, Dar Car Motors
Mills, Roslyn	Montgomery County Police	Security Officer, Grady Management
Mohardt, Neil	Montgomery County Police	Security Guard, Montgomery Investigative
Montgomery, Wil	Montgomery County Police	Security Officer, Kehilat Shalom
Moore, Farris	Montgomery County Police	Security Officer, G Street Fabrics
Moore, Richard	Montgomery County Police	Instructor, MVA
Moriarty, John	Montgomery County Police	Security Officer, Montgomery Investigative
Morse, Naomi	Dept. of Public Libraries	Reference Assistant, Holocaust Museum
Moser, Robert	Montgomery County Police	Security Officer, International Gem & Jewelry
Muollo, Tod	Montgomery County Police	Security Guard, Hebrew Academy
Murphy, Maureen	Montgomery County Police	Security Officer, Mont. Co. Revenue Authority
Najafi, David	Montgomery County Police	Security Officer, Montgomery Investigative
Najafi, David	Montgomery County Police	Security Officer, Federal Realty Investment
Neuforfer, Linda	Montgomery County Police	Security Guard, Loews Cineplex
Neuforfer, Linda	Montgomery County Police	Consultant, Neuforfer Consulting

Olin, William	Fire & Rescue Services	Contractor, Olin Home
Onderno, Joseph	Montgomery County Police	Security Guard, Proactive Special Security
Onderno, Joseph	Montgomery County Police	Security Guard, Montgomery Investigative
Ormsby, Oneil	Montgomery County Police	Security Guard, FenGuard Security
Ormsby, Oneil	Montgomery County Police	Vehicle Monitor, Landon School
Ormsby, Oneil	Montgomery County Police	Security Guard, Washington Hebrew Cong.
Ormsby, Oneil	Montgomery County Police	Security Officer, Fireside Condominium
Ormsby, Oneil	Montgomery County Police	Security Officer, Whiting, Turner Contracting
Ormsby, Oneil	Montgomery County Police	Security Officer, Potomac Swim & Tennis
Ormsby, Oneil	Montgomery County Police	Traffic Coordinator, The Norwood School
Ormsby, Oneil	Montgomery County Police	Security Officer, Magruders
Ormsby, Oneil	Montgomery County Police	Traffic Coordinator, Islamic Cntr.
Owens, Randall	Fire & Rescue Service	Paramedic, Mt. Airy Volunteer Fire Co.
Pallas, Edward	Montgomery County Police	Security Officer, Peppertree Farm Apts.
Panetti, John	Montgomery County Police	Security Officer, Montgomery Investigative
Parker, Brian	Sheriff's Office	Security Officer, American Multi Cinema
Parker, Kevin	Montgomery County Police	Security Guard, Gunner's View
Parlon, Michael	Montgomery County Police	Instructor, Dept. of Recreation
Peacock, William	Montgomery County Police	Security Guard, Fling Ltd.
Pendry, Gerald	Montgomery County Police	Security Officer, Grady Management
Phelps, Steven	Montgomery County Police	Security Officer, Federal Realty Investment
Phillips, Lawrence	Montgomery County Police	Flight Instructor, Montgomery Aviation
Picazo, Ray	Montgomery County Police	Security Officer, McDonalds
Pierce, Terrence	Montgomery County Police	Security Officer, First Class Security
Plant, Lawrence	Montgomery County Police	Security Guard, Scotland Community
Plant, Lawrence	Montgomery County Police	Security Guard, Prentiss Properties
Plant, Lawrence	Montgomery County Police	Security Officer, Charles E. Smith
Poe, Herbert	Montgomery County Police	Teacher, National Ballet
Popp, Thomas	Montgomery County Police	Security Officer, McDonalds
Power, Alexander	Montgomery County Police	Security Guard, CMI
Prather, Michael	Montgomery County Police	Security Officer, Darcars Toyota
Quinn, Diane	Montgomery County Police	Security Officer, Prentiss Properties
Quinn, Diane	Montgomery County Police	Security Officer, Charles E. Smith
Rachel, Jeffrey	Montgomery County Police	Security Officer, Chambers Management
Rand, Geoffrey	Montgomery County Police	Security Guard, PADCO
Raysick, Dominic	Montgomery County Police	Security Officer, Agusta Properties
Raysick, Dominic	Montgomery County Police	Security Officer, Montgomery Investigative
Reily, Michael	Montgomery County Police	Security Officer, Montgomery Investigative
Renauer, Sean	Montgomery County Police	Security Officer, Scotland Community Dev.
Renauer, Sean	Montgomery County Police	Vehicle Monitor, Landon School
Renauer, Sean	Montgomery County Police	Traffic Directions Officer, Georgetown Prep.
Renauer, Sean	Montgomery County Police	Analyst, House Market Research
Reynolds, Luther	Montgomery County Police	Criminology Teacher, Montgomery College
Rice, David	Montgomery County Police	Security Officer, Syms

Ricketts, Alan	Montgomery County Police	Security Guard, McLean School
Ridgely, Terry	Montgomery County Police	Security Guard, Cambridge Security
Ridgeway, Neal	Montgomery County Police	Security Officer, Cambridge Services Corp.
Ridgeway, Neal	Montgomery County Police	Security Officer, Montgomery Investigative
Ridgeway, Neal	Montgomery County Police	Security Officer, Fenguard Security
Ritchey, Peter	Montgomery County Police	Security Officer, Fenguard Security
Robinson, Barry	Montgomery County Police	Security Guard, Casey Management
Robinson, James	Montgomery County Police	Security Officer, Charles E. Smith
Robinson, James	Montgomery County Police	Security Officer, Montgomery Investigative
Rosia, Craig	Montgomery County Police	Vehicle Monitor, Landon School
Rosia, Craig	Montgomery County Police	Security Officer, Federal Realty Investment
Ruane, Michael	Montgomery County Police	Security Guard, Casey Management
Runion, Eric	Sheriff's Office	Security Officer, American Multi Cinema
Rupp, Douglas	Montgomery County Police	Security Officer, Federal Realty
Sabo, Bonnie	Board of Appeals	Secretary, Shaklee Distributor
Salamanca, Leticia	Montgomery County Police	Sales Associate, Lord & Taylor
Salb, John	Montgomery County Police	Night Watchman, Prentiss Properties
Scafide, Thomas	Montgomery County Police	Watchman, Federal Realty Investment
Scafide, Thomas	Montgomery County Police	Watchman, Kemp Mill Synagogue
Scafide, Thomas	Montgomery County Police	Security Officer, Lerner
Schick, Duane	Montgomery County Police	Security Guard, Montgomery Investigative
Schoem, Ira	Montgomery County Police	Security Officer, Scotland Community Dev.
Schoem, Ira	Montgomery County Police	Security Officer, Charles E. Smith
Scjpe, Ora	Montgomery County Police	Security Officer, Scotland Community Develop.
Shapiro, Thomas	Montgomery County Police	Security Officer, Casey Management
Sheelor, Mark	Montgomery County Police	Security Officer, Duffie
Shelley, Gaye	Dept. of Corrections	Interviewer, Westat Corporation
Shields, Sean	Montgomery County Police	Security Guard, Pro-Alert Security
Shoobridge, Barb	Montgomery County Police	Security Guard, Padco/Rydex
Shoobridge, Jason	Montgomery County Police	Security Guard, Grand Billiard Club
Shoobridge, Jason	Montgomery County Police	Security Guard, Padco/Rydex
Singletary, Dwayne	Sheriff's Office	Security Guard, Hechingers
Singletary, Dwayne	Montgomery County Police	Security Officer, G Street Fabrics
Smallwood, Troy	Montgomery County Police	Security Guard, The Management Group
Springer, Frank	Montgomery County Police	Security Officer, Courtyard by Marriott
Stancliff, Eric	Montgomery County Police	Security Officer, Syms
Stanislav, Michael	Montgomery County Police	Security Officer, First Class Security
Staten, Loretta	Montgomery County Police	Security Guard, Manugistics
Steere, Aaron	Montgomery County Police	Security Officer, Burlington Coat Factory
Steffen, Dale	Montgomery County Police	Night Watchman, Montgomery Investigative
Stiekens, James	Montgomery County Police	Security Officer, Magruders
Stock, Janet	Office of Human Resources	Secretary, Stock Brothers, Inc.
Straughn, Robert	Montgomery County Police	Courtesy Officer, Aimco
Stultz, David	Montgomery County Police	Security Officer, Patrol Security
Sullivan, Wendy	PHHS	Psychotherapist, self-employed

Thielke, Sean	Montgomery County Police	Security Officer, Peppertree Farm Apts.
Thomas, David	Montgomery County Police	Jewelry Mechanic, Nedley Jewelers
Thompson, Thomas	Montgomery County Police	Security Guard, FenGuard Security
Thompson, Thomas	Montgomery County Police	Security Officer, Federal Realty Investment
Tolbert, Agnes	DHHS	Customer Service Rep., First Nat. Bank
Tompkins, M.	Montgomery County Police	Security Officer, Grady Management
Tompkins, Monique	Montgomery County Police	Security Officer, Putt Putt Golf
Tompkins, Monique	Montgomery County Police	Security Officer, Westfield Corp.
Toomey, Cheryl	DHHS	Sales Assistant, Lord & Taylor
Tressler, Douglas	Montgomery County Police	Security Guard, Stoneridge Community
Tressler, Douglas	Montgomery County Police	Security Officer, Federal Realty
Tressler, Douglas	Montgomery County Police	Security Officer, Syms
Tressler, Douglas	Montgomery County Police	Security Officer, G Street Fabrics
Trethaway, Scott	Fire & Rescue Services	Paramedic, Bushkill Emergency
Trethaway, Scott	Fire & Rescue Services	Paramedic, City of Bethlehem
Typa, Brian	Montgomery County Police	Security Guard, Cambridge Security
Valerio, Victor	Montgomery County Police	Security Guard, Augusta Properties
Viands, Paul	Fire & Rescue Services	Driver, Alvico
Viands, Paul	Fire & Rescue Services	Firefighter, Bowie Volunteer
Walker, Brian	Montgomery County Police	Security Guard, Montgomery Investigative
Walker, Brian	Montgomery County Police	Security Officer, Magruders
Walters, Donald	Sheriff's Office	Security Officer, McDonalds
Webster, George	Montgomery County Police	Customer Service, Lowe's Home Improvement
Weed, David	Sheriff's Office	Security Officer, Burning Tree Golf Club
Wenner, Dawn	Montgomery County Police	Security Officer, FenGuard Security
Werts, Bruce	Montgomery County Police	Security Officer, Charles E. Smith
Wesley, Frank	Montgomery County Police	Security Guard, Scotland Community Dev.
Wesley, Frank	Montgomery County Police	Juvenile Monitor, Jewish Community
West, Stuart	Montgomery County Police	Security Officer, Cambridge Security Serv.
West, Stuart	Montgomery County Police	Security Officer, White Flint Mall
Whalen, James	Montgomery County Police	Security Guard, Stoneridge Homeowners
Whalen, William	Montgomery County Police	Security Guard, Stoneridge Condo Assoc.
White, Floyd	Montgomery County Police	Security Officer, Federal Realty
Wiggins, Sonia	Montgomery County Police	Security Officer, Montgomery Investigative
Wigmore, John	Montgomery County Police	Security Officer, First Class Security
Wiley, Leland	Montgomery County Police	Security Guard, Pro-Alert Security
Wilkins, Janyce	Montgomery County Police	Attorney, Self-employed
Wilkinson, Anita	Montgomery County Police	Security Officer, Montgomery Investigative
Willems, Johanna	Montgomery County Police	Black Jack Dealer, Talk of the Town
Williams, Johanna	Montgomery County Police	Interviewer, Westat
Williams, Nolan	Montgomery County Police	Security Officer, Federal Realty Investment'
Williams, Nolan	Montgomery County Police	Security Officer, Courtesy Jeep
Wiltshire, Wayne	Montgomery County Police	Security Officer, Hechinger
Wise, Gregory	Montgomery County Police	Security Officer, Chevy Chase Country Club
Wise, Gregory	Montgomery County Police	Security Officer, First Class Security

Wise, John Montgomery County Police
Wise, John Montgomery County Police
Wittenberger, Craig Montgomery County Police
Wofford, Bradley DHHS
Woodman, Gregory Montgomery County Police
Yates, Laura Montgomery County Police
Zacharek, Edward Montgomery County Police

Security Officer, Chambers Management
Security Officer, Stonehedge Condominium
Assistant, Athletic House of Maryland
Cashier, Giant Food
Security Guard, Padco/Rydex
Security Officer, Grady Management
Security Officer, Montgomery Investigative

Appendix D

Lobbyists

Lobbyist**Employer**

Gary R. Alexander
Alexander & Cleaver

Adventist Health Care Mid-Atlantic, Inc.

Steven L. Arabia

Pepco Communications LLC

Peter B. White
Alexander & Cleaver

Adventist Health Care Mid-Atlantic, Inc.

Robin F. Shaivitz
Alexander & Cleaver

Adventist Health Care Mid-Atlantic, Inc.

Chantel Ornstein Freedman
Alexander & Cleaver

Adventist Health Care Mid-Atlantic, Inc.

Ivan V. Lanier
Alexander & Cleaver

Adventist Health Care Mid-Atlantic, Inc.

Henry W. Bogdan

Maryland Association of Nonprofit Organizations

William Thomas Humber
National Smoker's Alliance

National Smoker's Alliance

David M. Bergman

Suburban Building Industry Association

Devin John Doolan
Furey, Doolan & Abell, LLP.

Westfield Corporation, Inc.
Montgomery County Planning Board
Starpower Communications

Neal Fitzpatrick
Audubon Naturalist Society

Audubon Naturalist Society

G. Keith Haller
Potomac Incorporated

Cable TV Montgomery

G. Donald Heath

Bell Atlantic - Maryland

Lisa N. Hoover

Apartment & Office Building Association of Washington

Barbara Sears
Linowes & Blocher, LLP

King Farm Associates, LLC
PFA Silver Spring L.C.
Willco Construction Co., Inc.
IDI Maryland, Inc.
Spaulding & Slye
Foulger Pratt Companies
The Penrose Group

Scott Wallace
Linowes & Blocher, LLP

Willco Construction Co., Inc.
IDI Maryland, Inc.
The Penrose Group
Washington Waldorf School
Boston Properties

Andrew Crocker
Linowes & Blocher, LLP

IDI Maryland, Inc.

Stephen P. Elmendorf
Linowes & Blocher, LLP

Travilah Park Development Corporation
The Chelsea School
Beatty Development Corporation
PEP Boys
LifeTime Fitness
Avalon Bay Communities
Fred Philpitt
Lou Milne
LCOR

Emily J. Vaias
Linowes & Blocher, LLP

Jack Pogue & Co.
Spaulding & Slye
Senior Campus Living

Anne C. Martin
Linowes & Blocher, LLP

Chevy Chase Land Company

William L. Mann

Allegheny Power

John F. Miller
Baltimore Gas & Electric Co.

Baltimore Gas & Electric Co.

Cynthia Bar
Lerch, Early, & Brewer

Elizabeth Court Associates
Hines Interests Ltd. Partnership
Camalier Ltd. Partnership & Davis Brotheres Farm

Robert Brewer
Lerch, Early & Brewer

Lerner Corporation
Bellemead Development

Cynthia Bar
Lerch, Early & Brewer

Hines Interests Ltd. Partnership

Gilbert B. Lessenco

Ogden Martin Systems of Montgomery, Inc.

Todd D. Brown
Linowes & Blocher, LLP

Mr. Martin K. Alloy
Erkiletian Real Estate Services
YMCA
CloveInvest L.C.
PFA Silver Spring L.C.
Greenhill Capital Corporation
Foulger-Pratt Development, Inc.
Discovery Communications, Inc.
Sumner Development Company

C. Robert Dalrymple
Linowes & Blocher, LLP

The Chevy Chase Land Company
Maisel-Hollins Development Co.
Chevy Chase Land Company

John J. Delaney
Linowes & Blocher, LLP

Washington Waldorf School

Scott C. Wallace
Linowes & Blocher, LLP

Washington Waldorf School
Boston Properties

Robert H. Metz
Linowes & Blocher, LLP

Easter Seals
Germantown Town Center, LLC
Jack Pogue & Co.
Easter Seals
Senior Campus Living

Stephen Z. Kaufman

CloveInvest LC

Robert R. Harris
Wilkes, Artis, Hedrick & Lane

Southern Engineering Corporation
Federal Realty Investment Trust
Tower Companies
EBY Development Corporation
Choice Hotels International
Fallsgrove Associates
Winchester Homes

Perry Berman
Wilkes, Artis, Hedrick & Lane

Southern Engineering Corporation
Federal Realty Investment Trust
Tower Companies
EBY Development Corporation
Choice Hotels International
Artec, Inc.
Fallsgrove Associates
GEIC

Erica G. Leatham
Wilkes, Artis, Hedrick & Lane

Southern Engineering Corporation
Federal Realty Investment Trust
Tower Companies
EBY Development Corporation
Choice Hotels International
Fallsgrove Associates
Winchester Homes
GEIC

Tim Dugan
Wilkes, Artis, Hedrick & Lane

Southern Engineering Corporation
Federal Realty Investment Trust
Tower Companies
EBY Development Corporation
Choice Hotels International
Fallsgrove Associates
Winchester Homes
GEIC

Patricia Harris
Wilkes, Artis, Hedrick & Lane

Southern Engineering Corporation
Federal Realty Investment Trust
Tower Companies
EBY Development Corporation
Choice Hotels International
Fallsgrove Associates
Winchester Homes

Clyde H. Sorrell
Hogan & Hartson LLP

Thomas B. Stone

Deborah M. Royster

William Kominers
Wilkes, Artis, Hedrick & Lane

Patricia A. Harris
Wilkes, Artis, Hedrick & Lane

Thomas D. Fleury
West*Group Management

Steven A. Robins
Hogan & Hartson LLP

Larry A. Gordon
Wilkes, Artis, Hedrick & Lane

Holy Cross Health

Hartford Life Insurance Co.

Starpower Communications, LLC

Grosvenor International Limited
EBY Development Corporation
Polinger, Shannon & Luchs
Southern Engineering Corporation
Choice Hotels
Grosvenor International (Atlantic) Limited
Colesville Joint Venture
Qiagen
National Association of Industrial & Office Properties
Fallsgrove Associates
Winchester Homes
Tower Companies
Federal Realty Investment Trust
GEIC

Federal Realty Investment Trust
Winchester Homes
GEIC

Westfarm Associates, LP

New England Development

Arltec, Inc.
Fallsgrove Associates
Winchester Homes, Inc.
Southern Engineering Corporation
Federal Realty Investment Trust
Tower Companies
EBY Development Corporation

David L. Winstead
Wilkes, Artis, Hedrick & Lane

City of Rockville
Montgomery County Chamber of Commerce

Laurance Levitan

Comcast Cable

Lawrence A. Shulman

R.M. Vredenburg & Co.
America OnLine, Inc.

Compensation and expenditures reported by registered lobbyists for lobbying activity in 1999 were as follows:

The following information summarizes the compensation and expenditures of registered lobbyists in 1999:

Compensation and expenses	\$ 4,559.00
Special Events	1,029.30
Office Expenses	30,741.54
Professional and technical research	7,407.31
Cost of publications	2,393.58
Witness fees and expenses	4,000.00
Total of Sections I-9	47,430.73
Total compensation paid to lobbyists (Section 10)	231,574.75
Gifts	1,400.00
Other expenses	73.15
 Grand Total	 280,478.63

Appendix E
Open Meetings Policy

MONTGOMERY COUNTY ETHICS COMMISSION

OPEN MEETINGS POLICY

The Montgomery County Ethics Commission (the "Commission") recognizes that, in the words of the Maryland Open Meetings Law:

It is essential to the maintenance of a democratic society that, except in special and appropriate circumstances:

- (1) public business be performed in an open and public manner; and
- (2) citizens be allowed to observe:
 - (i) the performance of public officials; and
 - (ii) the deliberations and decisions that the making of public policy involves.

Md. Code, State Government Article, §10-501(a). Thus, it is the policy of the Commission to transact as much of its business as possible in sessions that are open to the public, consistent with the restraints imposed by law, e.g., the confidentiality provisions of the Montgomery County Ethics Law and the discretion vested in the Commission by the Maryland Open Meetings Law.

Within those constraints, the Commission will schedule its meetings, construct its agenda, and maintain its minutes so that as much of each meeting as is permissible and appropriate is subject to public scrutiny. Notice of the date, time and place of each meeting shall be posted and disseminated at least one week in advance of each meeting, and minutes of the public portions of the meetings will be available to the public.

