

ADVISORY OPINION 90-1 [1990-1]

An advisory opinion was requested concerning whether a member of a county commission, committee or board could contract with the County government while serving on that commission, committee or board.

The Montgomery County Public Ethics Law regulates the conduct of public employees. Section 19A-4 includes within the definition of public employee members of boards, committees, and commissions, whether paid or unpaid. Section 19A-8 provides that an employee may not engage in outside employment without first obtaining the consent of the Ethics Commission. This general requirement, however, does not apply to a member of a board or commission in regard to employment held at the time of appointment if that employment was publicly disclosed to the appointing authority. Section 19A-9(c)(3) continues to apply even though the clients or customers of the member may change from time to time.

The Commission notes, however, that there appears to be a strong policy in favor of careful regulation of public employees having a financial interest in any contract with the County. See Section 11B-52 (prohibiting a contractor from employing any public employee, without a waiver from the Commission, from being employed by an entity contracting with the agency with which the employee is affiliated). In light of this policy, the Commission concludes that the exemption provided by Section 19A-9(c)(3) does not extend to self-employed members of a board or commission who, subsequent to appointment, contract with the County or take as a client an entity which is subject to the authority of or contracts with the agency with which the employee is affiliated.

In an earlier decision, the Commission ruled that members of a board, committee, or commission may contract with the County if they obtain a waiver from the Commission or resign prior to submitting a proposal to the County. Waivers have been granted if the member has not participated in a recommendation regarding the specific project in question. Generally, the member is thereafter disqualified from participating in any government action which affects the project in question.

Date of Issue: March 9, 1990