

[Advisory Opinion 1995-14]

October 18, 1995

To: [Name1 withheld], Director
Department of Information Systems and Telecommunications

[Name2 withheld], Computer Applications Manager
Department of Information Systems and Telecommunications

FROM: Jay L. Cohen, Chair [signed]
Montgomery County Ethics Commission

RE: Request for Advisory Opinion

You have requested advice regarding [Name2 withheld]'s status as contract administrator of three contracts that allow the County to procure computer systems analysis, programming, and consulting services on a task order basis. Each task order is developed with the assistance of County staff from various departments and competed among the three contractors and evaluated by a panel of raters, one of whom is [Name2 withheld]. Thereafter, [Name2 withheld] and the task order project manager make a recommendation to the Director, who makes the final selection.

[Name2 withheld]'s brother-in-law is president and owner of a local computer services firm. It has come to [Name2 withheld]'s attention recently that his brother-in-law's firm occasionally teams up with one of the three contractors for non-County business. He further understands that his brother-in-law's firm is not dependent upon this relationship for its survival as a business or a majority of its revenue. The question presented, however, is whether [Name2 withheld] may continue to administer these contracts.

Applicable Provisions of the Ethics Law

The Ethics Law defines *relative* as:

- (1) the public employee's siblings, parents, grandparents, children, grandchildren;
- (2) the public employee's spouse and the spouse's siblings, parents, grandparents, children, grandchildren; and
- (3) the spouses of these relatives.

§19A-4(n) of the Montgomery County Code 1994, as amended. Thus, Mr. Segal's brother-in-law is a relative under the Ethics Law.

The Ethics Law further provides:

- (a) *Prohibitions.* Unless permitted by a waiver, a public employee must not participate in;

* * *

- (2) any matter if the public employee knows or reasonably should know that any party to the matter is:

* * *

- (B) any business in which a relative has an economic interest, if the public employee knows about the interest;

* * *

- (F) any business that is engaged in a transaction with a County agency if:

- (i) another business owns a direct interest in the business;
- (ii) the public employee or a relative has a direct interest in the other business; and
- (iii) the public employee reasonably should know of both direct interest . . .

§19A-11(a)(2)(B) and (F) of the Montgomery County Code 1994, as amended.

The Ethics Commission may grant a waiver of these provisions if it finds that;

- (1) the best interests of the County would be served by granting the waiver;
- (2) the importance to the County of a public employee performing his or her official duties outweighs actual or potential harm of any conflict of interest; and
- (3) granting the waiver will not give a public employee an unfair advantage over other members of the public.

§19A-8(a) of the Montgomery County Code 1994, as amended.

Analysis

Based upon information provided, there is a conflict of interest that precludes [Name2 withheld] from participating in the administering of the contract with which his brother-in-law does business. [Name2 withheld]'s brother-in-law is a relative who has an economic interest in a business that is doing business with the County. The fact that the economic interest derives from non-County transactions may support the grant of a waiver, but does not eliminate the existence of the conflict.

At his juncture, the Commission is not able to evaluate the situation for purposes of a waiver, because there was not enough detail provided in your memorandum. The Commission finds that, absent a waiver, [Name2 withheld] must recuse himself from the administering of the subject contract. If he decides to seek a waiver from this Commission, he should provide detailed information that addresses both the nature and scope of his brother-in-law's relationship with the contractor and each of the three waiver elements listed above. See §19A-11 of the Montgomery County Code.

If you have any questions regarding this decision, please do not hesitate to contact the Commission.

cc: Barbara McNally, Executive Secretary, Montgomery County Ethics Commission