

[Advisory Opinion 1996-14]

August 21, 1996

[Name1 withheld]
Public Administrative Intern
County Council Office

Dear [Name1 withheld],

The Montgomery County Ethics Commission has considered your letter of May 9, 1996. You have asked the Commission for advice regarding your participation on various boards of directors of non-profit organizations. You are governed by the County's ethics laws because you are a public administration intern in the office of a County Council Member.

Section 19A-11 of the Montgomery County Code addresses issues of conflicts of interest. The section defines when a public employee must refrain from participating in his or her public duties due to an economic interest or other connection with a private entity. Certain provisions apply explicitly to the director of an organization who does not possess any financial interest in the organization. For example, one provision states:

[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:
 - (A) any business in which the public employee has an economic interest or is an officer, director, trustee, partner, or employee;

With respect to the quoted provision, the issue is whether you, as a public employee, may participate in a matter that involves your non-profit organization as a party. In order to participate in such a matter, you would need a waiver from the Ethics Commission unless you fall within the exception provided in Section 19A-11(b)(5). That condition applies if a series of conditions are satisfied. First, the public employee may not be compensated by the private organization and must disclose his or her relationship with the organization. In addition, the exception only applies if the public employee does not have any managerial responsibility or fiduciary duty to the non-profit organization, any authority to approve the organization's budget, any authority to select the officers or employees of the organization, or any authority to vote on matters as a member of the governing body of the organization. As a director of a non-profit organization, you probably perform some of these functions.

In your letter, you have mentioned numerous non-profit organizations with which you are, or would like to be, affiliated. Section 19A-11 does not preclude you volunteer activities with these organizations. Instead, Section 19A-11 mandates that you refrain

from participating as a County employee on certain matters affecting the organizations. The Commission is not prepared to issue you a waiver of 19A-11 without more information about the specific organizations, their interaction with the County, and the likely overlap between your County responsibilities and your volunteer activities.

You are responsible for identifying when one of these organizations may be affected by your County actions and when Section 19A-11 may require non-participation. Several of the listed organizations may have contracts or grants with the County and others may be engaged in activities that are regulated by the County. For example, the local chapter of United Way appears to be part of a larger organization that is very actively involved in fund raising through the County's Department of Human Resources and the Department of Finance. As a result, you should not participate as a public employee in matters affecting this relationship between the United Way and the County while serving as a Board Member of United Way's local chapter.

In addition, you should also be advised that Section 19A-12 would apply to any compensated activities for non-profit organizations. That section requires public employees to obtain permission for all compensated secondary employment. Unless a waiver is obtained, Section 19A-12(b) also prohibits employment with any business that is regulated by the County agency with which the public employee is affiliated.

Finally, Section 411 of the County Charter could affect your activities with any non-profit organization that contracts with the County. You would be precluded from acting as an agent for the organization if it maintains a contract with the County.

I hope the Commission has been responsive to your request. If you have any questions or would like to apply for a waiver under the provisions of Section 19A-8, please contact the Commission.

Very truly yours,
[signed]
Laurie Horwitz, Chair
Montgomery County Ethics Commission