

[Advisory Opinion 1996-15]

August 21, 1996

Kenneth B. Tecler, Esq.
Chen, Walsh, Tecler & McCabe, LLP

Re: Director of Development for HOC

Dear Mr. Tecler:

The Montgomery County Ethics Commission has received and reviewed your letter of April 3, 1996. In your letter, you request a waiver of Section 19A-11 of the County's Ethics Law on behalf of the Director of Development for the Housing Opportunities Commission (HOC). According to your letter, the Director owns stock in a developer. That developer is engaged in preliminary discussions with the HOC regarding the redevelopment of certain property in the County. The requested waiver would permit the participation of the Director of Development in the proposed development project.

The Ethics Commission is not prepared to grant the waiver request without additional information. As you know, the Commission may only grant the waiver if the requirements of Article 19A-8(a) are satisfied. The Commission must find 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 or class of employees performing official duties outweighs the actual or potential harm of any conflict of interest; and
- (3) granting the waiver will not give the public employee or class of employees an unfair economic advantage over other public employees or members of the public.

Although your letter discloses the estimated value of the Director's stock, it does not provide other information that would be useful to the Commission. Because you have not provided the name of the developer or of the Director, it is difficult for the Commission to assess the potential harm of any conflict or to determine whether the Director would receive an unfair advantage. If possible, please estimate the percentage of the developer's stock that is owned by the Director and provide more specific information about the importance of the proposed development to the developer's overall business activities.

The Commission would also appreciate additional information about the Director's responsibilities over the negotiations and the project. For example, please clarify whether the Director will remain involved in the project if the HOC and the developer reach an agreement to proceed. In addition, please explain how the developer was selected and the facts supporting the developer's selection over other companies.

Finally, the Commission prefers that public employees file their own waiver requests and that each waiver request identify the name of the public employee who needs the waiver.

I apologize for the Commission's slow response to your request. If you intend to send additional information, please be advised that the Commission's next meeting is scheduled for September 17, 1996.

Very truly yours,

[signed]

Laurie B. Horvitz, Chair

Montgomery County Ethics Commission