

[Waiver 1991-3]
W-91-27

MEMORANDUM

September 25, 1991

TO: Neal Potter
County Executive

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

RE: Waiver to Participate in Fund Raising Campaign for Regional Institute for
Children and Adolescents Association

By memorandum dated July 23, 1991, you requested the Ethics Commission to advise you if your participation as County Executive in a fund-raising campaign for the Regional Institute for Children and Adolescents Association (RICA Association) would violate the County ethics law. If necessary, you have requested a waiver to participate in the RICA Association fund-raising campaign.

The following background has been provided by you: The RICA Association, a non-profit 501(c)(3) entity, has asked you to participate in their fund-raising campaign, "Funds for the Future." The RICA Association is raising funds to supplement government support for the Regional Institute for Children and Adolescents (RICA), an institution of the State of Maryland.

The RICA Association wishes you to serve as Chair of the "Funds for the Future" campaign. This would involve your signing a letter on RICA Association letterhead asking for contributions from Montgomery County businesses. The mailing list will be created by the RICA Association. In addition, you would appear and speak at two meetings arranged by the RICA Association.

Section 19A-14 of the Montgomery County Public Ethics Law provides:

- “(a) A public employee must not intentionally use the prestige of office for private gain or the gain of another. Performing usual and customer constituent services, without additional compensation, is not the use of prestige prohibited by this subsection.”

The Ethics Commission believes that your participation in the "Funds for the Future" campaign in your capacity as County Executive constitutes the use of prestige of office for the gain of another that is prohibited by Section 19A-14. Accordingly, a waiver is required in order for you to participate as County Executive in the RICA Association fund-raising campaign.

Section 19A-18(a) authorizes the Ethics Commission to grant a waiver from the prohibition of Section 19A-14 if the Commission finds:

- “(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 the 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.”

Since the RICA Association campaign is to benefit an institution supported by the State and the County, the Commission finds that your participation in the fund-raising campaign as County Executive is in the best interests of the County.

In addressing the second criterion for granting a waiver, the Commission was concerned about the potential for “arm twisting” that might occur if the RICA Association were to try to use your position as County Executive as a means of putting pressure on County businesses to contribute. The Commission concluded, however, that there was no evidence that the RICA Association would be likely to engage in this type of inappropriate pressure; accordingly, the Commission concluded that there would be no conflict of interest or potential harm of a conflict of interest by your participation in the RICA Association fund-raising campaign.

Finally, the Commission concluded that granting you a waiver in the matter would not give you an unfair advantage over other members of the public. Accordingly, the Commission grants you a waiver to participate in the RICA Association fund-raising campaign in the manner you have outlined.

This letter confirms the oral decision already given to you. If you have any questions regarding this waiver, please contact the Commission.