

[Waiver 1991-4]
W-91-28

MEMORANDUM

October 21, 1991

TO: Herbert W. Winstead, Chief
Adult Addiction Programs
Department of Addiction, Victim, and Mental Health Services

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

RE: Request for Advisory Opinion and Waiver

The Ethics Commission has received a memorandum from Herbert W. Winstead dated September 17, 1991, requesting an advisory opinion and waiver. The Commission has also received a supplemental memorandum from Pete Holt, Director, Department of Addiction, Victim, and Mental Health Services (DAVMHS) dated October 3, 1991. Finally, the Commission has interviewed both Winstead and Holt. Based on these sources of information, the Ethics Commission understands the facts surrounding this request as follows:

The Maryland Treatment Center (MTC) has a contract with the County to provide non-hospital detoxification and intermediate care services. This contract is administered by DAVMHS. Contract performance is monitored by Hardy Bennett, a Program Manager, who is employed in the Adult Addiction Programs Section of DAVMHS. Winstead, who is Chief of the Adult Addiction Programs Section, supervises Bennett.

Winstead meets with Bennett at least weekly to discuss MTC contract performance. Though MTC invoices are checked by employees who are not subject to Winstead's supervision, Winstead's section is responsible for notifying the Division Chief if MTC has not delivered services as required under its contract with the County.

Winstead's wife is employed by MTC as a "Marketeer." She works in the Baltimore area and has no contact with clients located in Montgomery County. Winstead informed Holt of his wife's employment relationship with MTC prior to MTC entering into a contract with the County.

MTC was awarded the contract in question under a competitive solicitation (RFP #95482). The Commission understands that MTC is proposed to receive a new award to perform the same services under a recently issued solicitation (RFP #20095). Winstead

has not participated in the preparation of either RFP, the evaluation of proposals, or recommendation of contract award.

Holt has indicated that he has no supervisor other than Winstead who has both the qualifications and the available time to supervise Bennett's contract monitoring of the MTC contract.

Section 19A-11 of the Montgomery County Public Ethics law provides that, unless permitted by a waiver, a public employee must not participate in any matter if the matter involves as a party any business in which a relative has an economic interest.¹ Clearly, Section 19A-11 does not permit Winstead to supervise Bennett in relation to matters involving the MTC contract.²

Section 19A-8 authorizes the Ethics Commission to waive the provisions of Section 19A-11 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.”

In considering these criteria, the Commission finds the following factors persuasive:

1. The Director of DAVMHS has advised the Commission that besides himself Winstead is one of only two employees with the specialized knowledge to supervise the MTC contract monitor.
2. The Director of DAVMHS has further advised the Commission that Winstead is the only qualified employee with the time to supervise properly the MTC contract monitor and that any reassignment of that function would put an “unacceptable strain” on the management of DAVMHS.
3. The MTC contract was awarded through a competitive process in which Winstead did not participate.
4. Winstead's wife does not contact MTC clients that are located in Montgomery County.

In light of these factors, the Commission concludes that the criteria for granting a waiver have been met.

¹ Unless otherwise indicated, section references are to the Montgomery County code (1984).

² Section 19A-11(c) provides that an economic interest means any source of income that exceeds \$1,000. For purposes of this advisory opinion, the Commission assumes that the income paid by MTC to Winstead's wife exceeds \$1,000 per year.

Accordingly, the Ethics Commission grants a waiver to allow Winstead to supervise the contract monitor of the contract with MTC subject to the following condition:³ The Director of DAVMHS must, in writing, instruct the MTC contract monitor to report, in writing, any contract problems concerning MTC directly either to the Director of DAVMHS or the Addiction and Youth Treatment Services Division Chief.

The Commission trusts that the advisory opinion and waiver has been responsive to your inquiry. If you have any questions regarding this matter, please contact the Commission.

³ Section 19A-8(d) authorized the Commission to impose appropriate conditions when granting a waiver.