

[Waiver 1992-4]
W-92-32

MEMORANDUM

April 2, 1992

TO: David G. Sobers, Chief
Division of Environmental Policy and Compliance

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

RE: Request for Advisory Opinion and Waiver

The Ethics Commission has received a memorandum from David G. Sobers dated March 11, 1992, requesting an advisory opinion and waiver. The Commission also interviewed Sobers at its meeting on March 18, 1992. Based on these sources of information, the Commission understands the facts surrounding this request as follows:

Sobers is currently the Chief of the Division of Environmental Policy and Compliance in the Department of Environmental Protection (DEP). As of July 1, 1992, Sobers' position with Montgomery County will be abolished. Sobers plans to seek other employment after he leaves County service.

Sobers has been a County employee for 23 years, working exclusively in the environmental field. Prior to November 1990, Sobers was the Chief of the Division of Environmental Planning and Monitoring (DEPM) and from November 1989 to March 1990 was the acting Director of DEP. As the Chief of DEP, Sobers had significant responsibility for administering County contracts with environmental firms. Sobers also had supervisory responsibility for administering and enforcing the County laws concerning noise, air quality, water quality, and solid waste. In his present position, Sobers is also responsible for enforcing the Zoning Ordinance and the Building Code.

Sobers has submitted to the Ethics Commission a list of environmental firms which he proposes to contact regarding prospective employment; he indicates that these firms constitute perhaps up to 75% of the better and most relevant employment prospects. A list of these firms is attached. Prior to November 1990, Sobers assisted with the negotiation of or held administrative responsibility over a contract with each firm on the list.¹ Sobers has indicated that he does not believe that he has been involved in any regulatory actions taken against a firm on the list, though he concedes that as a Division Chief or as the acting Director, enforcement action may have been taken by DEP against a firm on the list such as Waste Management, Laidlaw, and Browning Ferris.

¹ In Sobers' present position, he has contract administration responsibilities with Fleming Associates, NUS Corporation, and Community Weatherization Fund. Sobers is not asking the Ethics Commission to approve seeking employment with any of these three firms.

Finally, Sobers has indicated that, if hired by a firm on the attached list, he would not accept an assignment working on a contract with Montgomery County without first obtaining the consent of the Ethics Commission.

Section 19A-13² provides that:

“For one year after the effective date of termination from County employment, a former public employee must not enter into any employment understanding or arrangements (express, implied, or tacit) with any person or business that contracts with a County agency if the public employee:

- (1) Significantly participated in regulating the person or business; or
- (2) Had official responsibility concerning a contract with the person or business (except a non-discretionary contract with a regulated public utility).”

Many of the firms on the list do not presently have a current contract with the County. Under Section 19A-13, Sobers is free to contact and accept employment with those firms which do not presently have a contract with the County. However, Sobers may not, under Section 19A-13, seek employment with those firms on the list which are currently contracting with Montgomery County without first obtaining a waiver from the Ethics Commission.

Section 19A-8(b) authorizes the Ethics Commission to waive the provisions of Section 19A-13 if the Commission finds:

- “(1) The waiver is needed to ensure that competent services to the County are timely and available;
- (2) Failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or
- (3) The proposed employment is not likely to create an actual conflict of interest.”

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

1. Sobers’ position with the County is being abolished.
2. Sobers’ involvement with contract administration with the firms on the list occurred at least 16 months ago.
3. Sobers has not been personally involved in any regulatory transaction with these firms.

² Unless otherwise indicated, section references are to the Montgomery County Code (1984).

4. Sobers has agreed that if he is employed by any of the firms on the list, he will not accept an assignment involving a contract with the County without first obtaining the consent of the Ethics Commission.

In light of these factors, the Commission concludes that Sobers' proposed employment with firms on the list is not likely to create an actual conflict of interest.

Accordingly, the Ethics Commission grants a waiver to allow Sobers to seek and accept employment with the firms on the list subject to the following condition: If Sobers accepts employment with one of the firms on the attached list, he must not accept, for a period of 12 months, any assignment involving a contract with the Montgomery County Government without first obtaining the consent of the Ethics Commission.³

If you have any questions regarding this matter, please contact the Commission.

³ Sobers has not sought, and the Commission has not granted, a waiver to the provisions of Section 19A-13(a) which prohibits a public employee from assisting any party other than the County in a "case, contract, or other specific matter for 10 years after the last date the employee significantly participated in the matter as a public employee."