

[Waiver 1994-2]

MEMORANDUM

June 7, 1994

TO: Willard Walton, Jr., Director
Office of Procurement

FROM: Barbara McNally, Executive Secretary
Ethics Commission

SUBJECT: Fire/Rescue Services Procurement

At its March, 1994 meeting, the Ethics Commission reviewed your request for advice concerning the procurement of various weight and exercise equipment for the Wheaton Volunteer Rescue Squad 2. This procurement request was brought to the Commission because it concerned a bid proposal made by Dale Johnson, a career firefighter assigned to the Kensington station, who holds an outside job with the Barbell Barn, a vendor and interested bidder.

Section 19A-11(a)2(A) of the Montgomery County Ethics Law states:

“Unless permitted by a waiver, a public employee must not participate in:
any matter if the public employee knows or reasonably should know that any party to the matter is:
(A) any business of which the public employee is an officer, director, trustee, partner, or employee;”

This provision prohibits Mr. Johnson from participating in this procurement without a waiver.

In its review of this matter, the Commission was informed that the procurement was to be handled through a competitive bidding process which would allow other vendors to participate in the offering. Under Section 19A-8, Commission is authorized to grant a waiver of this prohibition if all of the conditions for granting a waiver are met. These conditions are:

- (1) the best interest 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 consideration of these provisions, the Commission determined that allowing Mr. Johnson to bid with other vendors on this procurement would not give him an unfair advantage and would be serving the best interests of the county by promoting more competition to obtain the lowest price.

We trust that this correspondence is helpful and welcome any questions you may have regarding this matter.