

[Waiver 1997-1]

MEMORANDUM

TO: David W. Edgerley, Director
Department of Economic Development

FROM: Laurie B. Horvitz, Chair [initialed]
Montgomery County Ethics Commission

SUBJECT: Request for Advisory Opinion and Waiver

DATE: February 26, 1997

The Montgomery County Ethics Commission has reviewed your memorandum, dated February 5, 1997, in which you requested an advisory opinion and, if necessary, a waiver. In your memorandum you discussed the Department of Economic Development's interest in developing a project known as a "Business Resource Center." Your memorandum described the mission and services of the new center. The mission of the center would be to encourage the growth and productivity of small businesses by providing the following services: business counseling; business plan development; start up and entrepreneurial assistance; mentoring; computer access; library training and reference material; networking; and group training. The Department of Economic Development likely would provide operating or equipment financing to the center. Montgomery College also has expressed interest in contributing certain resources to this center. Although the details of the proposed partnership were not included in your memorandum, you explained that the College may contribute space, staff, and operating support. The center may be located at the College.

You have consulted the Ethics Commission because of your dual appointment as the Director of the Department of Economic Development for the County and as Special Assistant to the President for Montgomery College. In a memorandum dated September 8, 1995, the Commission first addressed your dual appointment and carefully considered your request for any waivers necessary to permit this dual appointment. At that time, the Commission issued a waiver of specific provisions in Section 19A-12 (prohibiting certain secondary employment) and a waiver of Section 19A-11(a)(1) (governing certain conflicts of interest). At that time, the Commission imposed several conditions upon its approval of your waiver request. These conditions were intended to reduce or eliminate any conflict of interest between the two positions. Although the College's interests will usually complement the County's economic development interests, there occasionally may be circumstances where the College and the County possess divergent interests or priorities.

In a subsequent memorandum, dated October 24, 1996, the Commission reviewed a report concerning your first year of service in both positions. At that time, the Commission cautioned you to be mindful of the conflicts that may arise. In order to reduce the likelihood of any conflicts, and to minimize the potential harm of any

conflicts, the Commission stated that you must still comply with six of the earlier conditions. According to that memorandum, the following conditions remain applicable and must be observed:

1. Your primary responsibilities shall be to serve as the Director of the Department of Economic Development, while your duties as Special Assistant to the President of Montgomery College shall be secondary.
2. You shall not act as a public spokesman for the College.
3. You shall not solicit funding or grants on behalf of the College. Furthermore, you shall not identify County grants for the College except to the extent that you ordinarily identify such County grants to members of the general public.
4. You shall not divulge to the College any confidential information obtained through your County position. See Sec. 19A-15(a) of the Montgomery County Code.
5. You must recuse yourself from any transactions which involve as parties both Montgomery County Government and Montgomery College. See Sections 19A-11(a)(2)(A) and 19A-12(b)(1)(B) of the Montgomery County Code. Neither provision has been waived by the Commission's decisions.
6. The waiver is based on the position description for the Special Assistant to the President of Montgomery College that was attached to the Commission's 1995 memorandum. If any additional changes are made to this position description, an additional waiver may be necessary.

Based on these conditions, the Commission's waiver remained in effect after the Commission's one-year review.

In light of these conditions, you prudently decided to request advice regarding the Business Resource Center. Without clarification or a waiver, you would be prohibited from recommending or approving an award of County funds for this program and would not be allowed to participate in the Center's development and administration. See conditions 3 and 5 above.

By a majority vote, the Commission has decided to issue an additional waiver permitting your full participation in the proposed center. The Commission has employed the waiver standard in Section 19A-8(a) which applies to conflicts of interest. This standard requires the Commission to find the following:

- (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.

As your memorandum explained, the Business Resource Center will advance legitimate interests of the County. The proposed partnership between the Department of Economic Development and the College is likely to improve the Center's effectiveness and to minimize the County's financial contribution. Although you have provided the Commission with few details regarding similar programs in other jurisdictions, you have advised the Commission that other counties have developed business resource centers and that some of these centers are associated with local educational institutions. In addition, your unique role with both institutions would allow for an effective coordination of resources. Therefore, the Commission has determined that the best interest of the County would be served by granting the waiver.

The Commission has also concluded that the importance of your participation in this program outweighs the actual or potential harm of any conflict of interest. As Director of the Department of Economic Development, it is important for you to participate in funding and other decisions relating to this program. Furthermore, there is little likelihood of any conflict of interest. With respect to this particular program, the County and the College do not possess divergent interests. Therefore, you are not likely to encounter circumstances where the goals and priorities of the College impede or conflict with the County's objectives for the Center. In addition, you will not receive any personal financial benefit from the program. You are a salaried employee and will not receive any bonus based upon the College's participation in the program.

The Commission also determined that the waiver will not give you an unfair advantage over other members of the public. As explained above, you will not be provided with any financial benefit from this program. If the program succeeds, you may receive general recognition for its success from the College or the County. Any recognition for such a professional accomplishment is not tantamount to an "unfair advantage."

Accordingly, the Commission has approved your request for a waiver. The approval is limited to your participation in this particular program. The six conditions remain in effect for all other activities. As stated previously, the Commission remains concerned that the interests of the College and the County could diverge in some circumstances. Therefore, it remains important for the Commission to review any other transactions which involve the Department of Economic Development and the College and any other proposals that may involve your solicitation of funding or grants for the College.

cc: Mr. Bruce Romer, Chief Administrative Officer
Chuck Thompson, County Attorney