

[Waiver 1997-2]

March 17, 1997

Carol Rubin, Esq.
Office of the County Attorney
101 Monroe St., 3rd Floor
Rockville, MD 20850

Dear Ms. Rubin:

The Ethics Commission has reviewed your request for a waiver of Section 19A-13 of the Montgomery County Code. In a Memorandum dated December 30, 1996, you requested a waiver so that you may accept employment with Moore & Associates, a commercial real estate development firm located in Silver Spring. The Commission was provided the following information:

In June 1992 you were assigned responsibility for legal oversight of the Silver Spring Redevelopment Program by the County Attorney. In February 1995, a Redevelopment Program office was established in Silver Spring and you were relocated there. Over the past four years with the County you (1) developed Urban Renewal Plans and strategies for the revitalization of Silver Spring; (2) participated in negotiations of agreements on behalf of the County; (3) approved all relevant County documents for form and legality; (4) managed land acquisition activities in the Urban Renewal Area; and (5) provided advice and recommendations to the Director of the Silver Spring Redevelopment Program and the County Executive concerning various aspects of revitalization activities in Silver Spring, including economic development initiatives. Many of these responsibilities involved negotiations with Moore & Associates because this firm was selected by the County to develop two major projects in Silver Spring's revitalization plan. In November of 1996, you had an initial conversation with a member of Moore & Associates regarding your possible employment as General Counsel with Moore & Associates. As soon as you commenced discussions with Moore & Associates, you withdrew from any representation of the County in its relationship with the firm. You have since been offered a job.

In a January 9, 1997 memorandum, Mr. William Mooney, your supervisor, informed the Commission that he had no objection to the Commission granting your waiver request. According to Mr. Mooney's letter, you do not possess confidential information concerning the County that is relevant to Moore & Associates or to the firm's property in the Urban Renewal Site. According to Mr. Mooney, the County is not negotiating or dealing with Moore & Associates in any substantive way except for enforcement of the Office Memorandum of Understanding. The County currently has no plans to acquire any of Moore & Associates' property.

If necessary, you have requested a waiver of Section 19A-13 of the Montgomery County Code. Section 19A-13 states:

- (a) A former employee must not accept employment or assist any party, other than a County Agency, 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.
- (b) For one year after the effective date of termination from County employment, a former public employee must not enter into any employment understanding or arrangement (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).

The Ethics Commission first examined whether you needed to obtain a waiver of Section 19A-13. The Commission reviewed your duties and responsibilities with the Redevelopment Program as they involved Moore & Associates and determined that your request for permission to work for Moore & Associates required a waiver of Section 19A-13(b).

The Commission then applied Section 19A-8(b) which states:

- (b) After receiving a written request, the Commission may grant a waiver of the prohibitions of subsection 19A-12(b) or Section 19A-13 if it 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.

Under this test, only one of the three criteria must be satisfied in order to grant a waiver request.

Based upon the facts presented in your memorandum and Mr. Mooney's correspondence, the Commission determined that Section 19A-8(b)(3) has been satisfied. The Commission found that the proposed employment is not likely to create an actual conflict of interest if you observe certain conditions. Accordingly, the Commission granted you a waiver of Section 19A-13(b) and imposed the following conditions:

- (1) If the County enters into negotiations with Moore & Associates at any time in the future, you must not be involved in those negotiations for Moore & Associates.
- (2) You must not represent Moore & Associates in any negotiations with the County regarding the Silver Spring Urban Renewal District.
- (3) For the next 10 years, you must not participate in any litigation against Montgomery County involving contracts between Moore & Associates and the County that were in existence during your County employment (or renewals of those contracts).

If you deem necessary, you may request a waiver of these conditions, by presenting specific factual circumstances to the Commission for review and consideration at a future time.

The Commission trusts that this letter is responsive to your request. If you have any questions or need further assistance or advice, please contact our office.

Sincerely,
[signed]
Laurie B. Horvitz, Chair

LBH/jlw