

[Waiver 1997-3]

April 11, 1997

Betty N. Ferber
Assistant County Attorney
101 Monroe St., Third Floor
Rockville, MD 20850

Dear Ms. Ferber:

I write on behalf of the Montgomery County Ethics Commission in response to your memorandum of March 11, 1997. The Ethics Commission has considered your request for a waiver of the conflict of interest provisions in the County Code. See 19A-11 of the Montgomery County Code.

Specifically, you have advised the Commission that you have been assigned to review a legal matter on behalf of the Office of the County Attorney with respect to the application of the federal tax laws to a particular transaction involving the Potomac Edison Company. You own stock in the company both individually and in conjunction with others totaling approximately Thirty Thousand Dollars (\$30,000.00). The issue that you have been assigned concerns whether the Federal Government may impose a tax upon a component of the project. The tax is passed along to the County by PEPCO. According to your memorandum, you are not analyzing PEPCO's tax liability. Instead, the County Attorney's Office is examining whether or not Montgomery County has a liability through PEPCO to the Federal Government.

At the Commission's meeting in March, the County Attorney informed the Commission of your unique qualifications to work on this project. He expressed support for your waiver request.

Based upon the County Attorney's recommendation, and your professional background and expertise, the Commission found that the best interests of the County would be served by granting the waiver. In addition, the Commission found that the importance to the County of your performing your official duties outweighs the actual or potential harm of any conflict of interest. Significantly, your involvement is not likely to affect PEPCO's liability. Therefore, the potential harm from this conflict is minimal. Finally, issuance of a waiver will not give you an unfair advantage over other members of the public. Your participation in this matter will not inure to your unique advantage as a PEPCO stockholder. Instead, you may save the County and the taxpayers from paying unnecessary taxes. Accordingly, you have satisfied the three criteria for a waiver of Section 19A-11. See 19A-8(a). Therefore, the Commission concluded that the conflict of interest provision in the Ethics Code should be waived in order to permit your participation in this legal matter.

Thank you for contacting the Commission. I trust that the Commission has fully answered your questions. If you have any additional concerns, please do not hesitate to contact us.

Very truly yours,

[signed]

Laurie Horvitz, Chair

Montgomery County Ethics Commission

LH/jlw