



MONTGOMERY COUNTY ETHICS COMMISSION

ADVISORY OPINION

The Montgomery County Public Ethics Law (“the Ethics Law”)¹ permits any person who is subject to that law (or certain other County ethics provisions) to ask the Ethics Commission for an advisory opinion on the meaning or application of those laws to them.² This advisory opinion was requested by a County employee who, as a private individual, serves on the Board of Directors of a private organization that receives funding from the County.

QUESTION PRESENTED

May a County employee participate, on a Board of Directors of a private organization that receives funding from the County?

MATERIAL FACTS

The requester is a County employee who, as a private individual, also serves as a voting member of the Board of Directors of a private, non-profit organization that is funded in part by Montgomery County, Maryland.³ The request indicates that the requester was appointed to the Board several years ago because of certain kinds of experience the requester gained as a County employee. However, based on the requester’s job title and agency designation, the Commission understands that neither the requester, as a County employee, nor the requester’s County agency regulates, does

¹ Mont. Co. Code, Chapter 19A.

² See §19A-7(a). Unless the requester authorizes disclosure, the Commission must keep the name of the requester confidential. *Id.* Nevertheless, the Commission must: (a) publish each opinion when it is issued unless the Commission finds that the privacy interest of a public employee or other person clearly and substantially outweighs the public’s needs to be informed about Commission actions; (b) at least annually must publish a list of all unpublished opinions, with the reason why each opinion was not published; and (c) take all reasonable steps consistent with making the opinion useful for public guidance to keep confidential the identity of any person who is affected by the opinion request. §19A-7(b).

³ In the absence of any indication to the contrary in the request, the Commission understands that the requester is not compensated for his service on the Board of Directors. Were these directors compensated, the Ethics Law would require that the requester seek and obtain Ethics Commission approval for such “other employment”. See §§19A-12(a)(1) (“A public employee must not engage in any other employment unless the employment is approved by the Commission”), 19A-4(g) (“*Employment* or *employ* means engaging in an activity for compensation”).

business with, or is otherwise involved in the County funding of the private organization.⁴

APPLICABLE LAW

In pertinent part, the Ethics Law provides as follows.

Sec. 19A-11. Participation of public employees.

(a) Unless permitted by a waiver, a public employee must not participate in:

* * *

(2) any matter if the public employee knows or reasonably should know that any party to the matter is:

(A) any business in which the public employee has an economic interest or is an officer, *director*, trustee, partner, or employee.⁵

§ 19A-12. Restrictions on other employment and business ownership.

(a) General restrictions.

(1) A public employee must not engage in any other employment unless the employment is approved by the Commission. The Commission may impose conditions on its approval of other employment.

(2) The Commission may adopt appropriate procedures to receive and decide other employment requests.^[6]

* * *

(4) A request for approval of other employment is confidential. Commission action on the request is also confidential. However, the Commission must disclose to the public each action approving an employment request, including:

⁴ If this understanding is not correct, the requester should supplement the request with a full statement of the appropriate facts, and may not rely on this Advisory Opinion.

⁵ “*Business* means any for-profit or non-for-profit enterprise, including a corporation, general or limited partnership, sole proprietorship, joint venture, association, firm, institute, trust or foundation. Business does not include a County agency, but includes an independent fire department or rescue squad.” §19A-4(b).

⁶ The Commission has adopted Administrative Policies and Procedures For Outside Employment. *See* Executive Regulation 25-01 (November 13, 2001). Among other things, this regulation requires that employees submit complete outside-employment-approval-request forms containing certain information to their department/agency head through their immediate supervisor. ¶5.0.1. The department/agency head and supervisor must recommend approval or disapproval of the request and forward the request with recommendations to the Ethics Commission for review and final decision. ¶5.1.1. County employees may begin outside employment when the employment is approved by the department/agency head. ¶6.1. If the department/agency has no question regarding a conflict of interest, a request for outside employment with a duration of six weeks or less may be approved by the department/agency head without review by the Ethics Commission. ¶6.5.

- (A) the name of the employee;
- (B) the name of the employer;
- (C) the nature of the other employment; and
- (D) any conditions imposed by the Commission.

(b) *Specific restrictions.* Unless the Commission grants a waiver under subsection 19A-8(b), a public employee must not:

- (1) be employed by, or own more than one percent of, any business that:
 - (A) is regulated by the County agency with which the public employee is affiliated; or
 - (B) negotiates or contracts with the County agency with which the public employee is affiliated; or
- (2) hold any employment relationship that would impair the impartiality and independence of judgment of the public employee.⁷

§ 19A-14. Misuse of prestige of office

(a) A public employee must not intentionally use the prestige of office for private gain or the gain of another. Performing usual and customary services, without additional compensation, is not prohibited by this subsection.

§ 19A-15. Disclosure of confidential information

(a) Except when authorized by law, a public employee or former public employee must not disclose confidential information relating to or maintained by a County agency that is not available to the public. A public employee or former public employee must not use confidential information for personal gain or the gain of another. Unless expressly prohibited by law, a public employee may disclose validly obtained confidential information to another public employee if the other public employee reasonably needs the information to carry out the employee's duties.

ANALYSIS & CONCLUSION

The Ethics Law does not prohibit a public employee from serving on the board of directors of a private entity. Rather, the Ethics Law prohibits a public employee who

⁷ Subsections (a) and (b) do not apply to (1) a public employee who is appointed to a regulatory or licensing body under a statutory provision that persons subject to the jurisdiction of the body may be represented in appointments to it; (2) a public employee whose government duties are ministerial, if the employment does not create a conflict of interest; (3) a member of a board, commission, or similar body in regard to employment held when the member was appointed if the employment was publicly disclosed before appointment to the appointing authority, and to the County Council when confirmation is required; or (4) an elected public employee in regard to employment held at the time of election, if the employment is disclosed to the Board of Supervisors of Elections before the election.

serves on such a board from participating, in the performance of his or her public duties, in any matter if the public employee knows or reasonably should know that the private entity on whose board he or she serves is a party to the matter. Therefore, the Ethics Law does not prohibit the requester from serving as a voting member of the board of directors of a private entity—even an entity that receives County funding.

However, the requester may not:

- (1) participate as a County employee in any matter to which the private entity is a party,
- (2) intentionally use the prestige of his or her County position for his or her private gain or the gain of a private entity; or
- (3) disclose to agents, officials or employees of the private entity confidential information relating to or maintained by a County agency that is not available to the public.

Furthermore, if the private entity compensates the requester for his or her service on its board, the requester may not engage in such “other employment” unless, in accordance with the Commission’s “outside employment” procedures, he or she submits a request and the request is approved.

FOR THE ETHICS COMMISSION:

[signed]

Elizabeth K. Kellar, Chair

July 16, 2002