

[Advisory Opinion 1993-1]

MEMORANDUM

June 7, 1993

TO: [Name withheld]

FROM: Jay L. Cohen, Chair
Montgomery County Ethics Commission

RE: Request for Advisory Opinion

The Ethics Commission has reviewed your request of March 31, 1993, for an advisory opinion.

BACKGROUND

The Ethics Commission understands the background of your request is as follows: You are a member of the Montgomery County Mental Health Advisory Committee (MHAC). You are employed as an attorney/advisor in the Office of Legal Counsel at the U.S. Equal Employment Opportunity Commission. Your job involves coordinating regulations issued by other federal agencies and which involve EEO or raise civil rights questions. Your work includes rendering advice about federal employment laws, including the Americans with Disability Act (ADA). You indicate that you are, on your own time, working on a general background paper on mental illness and the ADA.

Section 24-34 establishes MHAC.¹ Section 24-38 establishes the duties of MHAC which include recommending to the County Government appropriate allocation of funds and establishing appropriate priorities for State and County comprehensive mental health plans.

MONTGOMERY COUNTY PUBLIC ETHICS LAW

The Commission believes the following provisions of the ethics law are relevant to your inquiry. Section 19A-11(a)(1)(B) prohibits a public employee from participating in a matter that affects, in a manner distinct from its effect on the public generally, any business in which the public employee has an economic interest.² Section 19A-11(a)(2)(A) prohibits a public employee from participating in a matter if the public employee knows or reasonably should know that any party to the matter is any business in which the public employee is an officer, director, trustee, partner or employee. Section 19A-12 provides that a public employee must not engage in any outside employment unless the employment is approved by the Ethics Commission. Section 19A-12(c)(3)

¹Unless otherwise indicated, section references are to the Montgomery County Code (1984).

²Section 19A-4(m) defines, for purposes of the ethics law, a public employee to include a member of a committee whether or not the member is compensated.

provides that a member of a committee does not need to obtain the consent of the Ethics Commission to engage in outside employment held when the member was appointed to the committee if the employment was publicly disclosed before appointment to the appointing authority and to the County Council when confirmation is required. Section 19A-15(a) prohibits a public employee from disclosing confidential information relating to a County agency that is not available to the public or to use confidential information for personal gain or the gain of another.

DISCUSSION

The Ethics Commission agrees that your intention to recuse yourself from any matter that involves a conflict of interest is appropriate. The Commission assumes that your employment with the U.S. Equal Opportunity Commission preceded your appointment to MHAC and was publicly disclosed under Section 19A-12(c)(3). The Ethics Commission also assumes that your preparation of the background paper on mental illness and the ADA is not being undertaken with the intent of obtaining compensation. If either of these assumptions is incorrect, the Ethics Commission advises you to obtain the appropriate outside employment application and submit it to the Ethics Commission. You must not, of course, use any confidential information which you obtain as a member of MHAC in the paper you are preparing on mental illness and the ADA.

CONCLUSION

The Ethics Commission trusts you will find this advice responsive to your inquiry. If you have further questions, please do not hesitate to contact the Ethics Commission.

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cc: Barbara McNally, Administrative Specialist, Ethics Commission