

[Advisory Opinion 1994-12]

MEMORANDUM

October 18, 1994

TO: [Name1 withheld]
County Attorney

[Name2 withheld]
Senior Assistant County Attorney
Team Leader, Contracts Team

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

RE: Request for Advisory Opinion and/or Waiver

Your request for an advisory opinion and, if necessary, a waiver has been reviewed by the Ethics Commission. The following information was provided in support of your request.

The County Attorney recently realigned certain work assignments within the County Attorney's Office and placed responsibility for tax assessment cases with the Contracts/Legislation Team. The Team Leader of the Contracts/Legislation Team (Team Leader) is responsible for supervising the attorneys assigned to handle the tax assessment cases and may act as lead attorney in those cases from time to time. The parties to tax assessment cases include the owner of the property, the State Department of Assessments and Taxation (SDAT), and occasionally the County. The Office of the County Attorney represents the County, and the Office of the Attorney General represents the SDAT. Each party advocates its own valuation of the property in question, and the County intervenes in some cases to defend the State's valuation when large amounts of tax are at issue. In almost all of the cases in which the County participates, commercial real property is involved.

The Team Leader's brother-in-law is in charge of the commercial assessment section in the local SDAT office. The commercial section has primary responsibility for setting the assessed value of commercial real property in Montgomery County. An assessment appeal is first decided by the local assessor for the SDAT. Thereafter, an appeal may be taken to the Property Assessment Appeal Board, the Maryland Tax Court, the Circuit Court, the Court of Special Appeals, and the Court of Appeals. The County usually does not become involved in an assessment matter until the case reaches the level of the Maryland Tax Court.

The Montgomery County Ethics Law provides in pertinent part that:

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

(1) any matter that affects, in a manner distinct from its effect on the public generally, any:

* * *

(C) property or business in which a relative has an economic interest, if the public employee knows about the relative's interest . . .

* * *

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

* * *

(B) any business in which a relative has an economic interest, if the public employee knows about the interest . . .

§§19A-11(a)(1)(C) and (2)(B) of the Montgomery County Code 1984. The Ethics Law defines relative to include a spouse's siblings, §19A-4(n) of the Montgomery County Code 1994, and it defines business as:

[A]ny for-profit or non-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) of the Montgomery County Code 1994. This definition of business is silent regarding whether an agency of the State is included or excluded from its scope. The Ethics Commission need not resolve this issue for purposes of this opinion, because it has concluded that no conflict of interest exists.

The Ethics Commission has determined that no waiver is necessary at this time, because there is no conflict of interest. Specifically, based upon the information provided, there is no personal economic interest that accrues to either the Team Leader or his brother-in-law in the exercise of their respective duties. Rather, any benefit that derives from their decisions accrues to the County and the State, respectively, and these individuals have no unfair advantage over the general public.

In the event that a particular case presents a conflict in the future, a waiver request should be submitted at that juncture. The waiver request should address three issues: whether an unfair advantage exists, whether a conflict of interest exists, and whether it is in the public interest that a waiver be granted. See §19A-8(a) of the Montgomery County Code. The Ethics Commission is concerned with the element that requires a finding that it is in the best interest of the County to grant a waiver. At such time as a waiver may become appropriate, the Ethics Commission would require additional explanation of the

precise basis for the County Attorney's determination that no satisfactory alternative options to the assignment of this supervisory function exist. In the interim, the Ethics Commission has found no conflict of interest and, therefore, no waiver is required.

This advisory opinion does not address the effect of the State Ethics Law on the Team Leader's brother-in-law. If you have any questions concerning this opinion, please do not hesitate to contact the Ethics Commission.

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cc: Barbara McNally, Executive Secretary, Montgomery County Ethics Commission