

W-90-12 [Waiver 1990-12]

October 9, 1990

Mr. Robert G. Snyder
[Address withheld]

Dear Mr. Snyder:

The Montgomery County Ethics Commission has reviewed your request for a waiver of the ethics law to allow you to accept employment with a current contractor with Montgomery County for which you acted as a contract monitor.

In regard to your request, two sections of the ethics law must be addressed. Section 19A-13 provides that:

- (a) A former public 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),
- (c) Significant participation means direct administrative or operating authority to approve, disapprove, or otherwise decide government action with respect to a specific matter, whether the authority is intermediate or final, exercisable alone or with others, and exercised personally or through subordinates. It ordinarily does not include program or legislative oversight, or budget preparation, review, or adoption.

Section 19A-14(a) of the code states that:

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

Under Section 19A-8(b), the Commission may grant a waiver of the prohibitions of 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.

In its consideration of your request, the Commission had three concerns:

- (1) Did your county employment place you in an advantageous position for recruitment by the High Technology Council that other persons would not be afforded? (Prestige of office)
- (2) How significant was your involvement as the monitor of the High Technology Council contract with Montgomery County?
- (3) Would your duties as Vice-President of the High Technology Council create an actual conflict of interest?

As to the first question, Dr. Plocilla explained that the recruitment and hiring process was open and competitive. A search committee comprised of members of the Board of Directors of the High Technology Council screened applicants who were then interviewed by the executive committee and a selection of five finalists was made by a subgroup of the executive committee. These finalists were ranked with the highest ranking finalist being offered the position.

Based on this information, the Commission concluded that there has been no violation of Section 19A-14.

In regard to the contract monitoring, your responsibility according to your replies to our inquiries was twofold: to ensure that the High Technology Council produced its quarterly reports and to make recommendations to superiors to pay reimbursement to the High Technology Council in accordance with the membership dues collected as per the guidelines of the county contract. According to you, these activities required a minimal amount of your time. You estimated that 20% of your time, however, was spent in contacts with the High Technology Council on matters of mutual concern to the County and High Technology Council in your official capacity as business academia coordinator. The Commission, therefore, concluded that your contract monitoring responsibilities were minor.

Supplementary information from the High Technology Council and the Chief Administrative Officer indicated that your primary responsibility as Vice-President of the High Technology Council will be to promote in the region (Montgomery County, Prince Georges County, and Frederick) the development of high technology companies. The Chief Administrative Officer has indicated that this activity is consistent with the

County's goal of strengthening the climate in Montgomery County for high technology business. Accordingly, the Commission grants you a waiver under Section 19A-8(b)(3) to accept this employment opportunity.

Under Section 19A-8(e) this opinion must be published. If you have any questions regarding the Commission's decision, please contact our office.