

W-90-14 [Waiver 1990-14]

December 10, 1990

Mrs. Catherine Titus
[Address withheld]

Dear Mrs. Titus:

This letter will confirm the verbal waiver given to you after a special Ethics Commission meeting held on November 28, 1990.

By letter dated November 26, 1990, you informed the Ethics Commission that you had accepted employment as the confidential aide to Councilmember Betty A. Krahnke. You requested advice concerning the application of Section 19A-11 of the Montgomery County Public Ethics Law to your work as the Councilmember's aide; in addition, you requested the Commission to grant a waiver to allow you to participate as a public employee in matters that may involve a client of your husband or his law firm.

Your letter indicated that your husband, Roger Titus, is a partner in the law firm of Venable, Baetjer & Howard (VBH). VBH is a large, regional firm that currently represents in various matters Montgomery County, Montgomery County Public Schools, Washington Suburban Sanitary Commission, Maryland-National Capital Park and Planning Commission, Montgomery College, the City of Rockville, the Village of Martin's Additions, the Village of North Chevy Chase, and the Village of Friendship Heights.

Your letter also indicated that as the confidential aide of Councilmember Krahnke your primary responsibilities will be to assist the Councilmember in the operation of her office. We also understand that you may serve as advisor to the Councilmember. Your position, however, will not require you to make final decisions regarding public policy. Given the extensive list of VBH's clients, including the public entities mentioned above, you have asked whether you may participate in a matter if a client of VBH is involved.

Section 19A-11(a)(2)(E) states that a public employee must not participate in a matter that involves a business or individual that is a party to a contract with the public employee or a relative, "if the contract could reasonably result in a conflict between private interests and public duties." A determination of whether this provision would apply to a public employee requires careful analysis of the facts with respect to each case. Accordingly, the Commission concludes that a waiver would be necessary to allow you as a general rule to participate in matters that involve a client of VBH.

Section 19A-8 Authorizes the Commission to grant a waiver from Section 19A-11 if the Commission finds that:

"(1) The best interests of the County would be served by granting the waiver; (2) the importance to the County of a public employee

performing his or her official duties outweighs the actual or potential harm of any conflict of interest; and (3) granting the waiver will not give a public employee an unfair advantage over other members of the public.”

The Commission notes that the position of confidential aide to a Councilmember is not a merit system appointment and involves a high degree of trust between the aide and the councilmember. Accordingly, the Commission concludes that the best interests of the County would be served by preserving for a councilmember the greatest latitude possible in the selection of a confidential aide. The Commission notes that VBH is a large, regional firm with an extensive client list including public entities. At the same time, a councilmember needs a confidential aide to participate in most matters coming before the Council. Accordingly, the Commission concludes that the benefit of allowing you to participate in matters involving a client of VBH is great while the potential harm of any conflict of interest is small. Finally, the Commission does not believe that granting you this waiver will give you an unfair advantage over other members of the public.

Accordingly, the Commission grants you a waiver to participate in matters involving a client of VBH subject to the following restrictions:

1. You must not discuss or participate as a public employee in any matter in which VBH is acting as a legal representative or is a party.
2. You must disclose to Councilmember Krahne the identity of any person or entity involved in a matter if you know that person or entity is a client of VBH. This will allow Councilmember Krahne the opportunity to decide if you should continue to participate in that matter.

Finally, the Commission wishes to remind you that Section 19A-15 prohibits a public employee from disclosing confidential information relating to a County agency if it is not available to the public. You must not use confidential information for personal gain or the gain of another.

Thank you for bringing this matter to the Commission. If you have any questions regarding this waiver, please do not hesitate to contact the Commission.