

Opinion 1990-2 W [**Waiver 1990-8A**]

MEMORANDUM

June 12, 1990

TO: Lewis T. Roberts
Chief Administrative Officer

FROM: Donald E. Jefferson, Chairman
Ethics Commission

RE: Police Officer Residential Discounts

Opinion 1990-2 W

By memorandum dated May 15, 1990, you asked the Ethics Commission for an advisory opinion regarding the propriety of police officers accepting rent discounts from owners or managers of certain apartment complexes in Montgomery County. If the Commission finds that accepting a rent discount technically violates the ethics law, you requested a waiver to allow police officers to accept these discounts.

The Ethics Commission understands that the amounts of discounts vary widely. The Commission also notes that according to certain press accounts, police officers are offered other inducements such as a waiver of credit check charges and the requirement to post a security deposit.

Section 19A-16 prohibits a public employee from accepting a gift from any person or entity that owns or operates a business that is regulated by the County agency with which the public employee is affiliated.¹ Providing a rental discount or other inducement to Montgomery County police officers is clearly a gift within the meaning of the Montgomery County Public Ethics Law. See also, Section 19A-4(h).

Montgomery County police officers exercise County-wide authority. Therefore, a police officer may not accept a gift from any person or entity that operates a business in Montgomery County without violating Section 19A-16 of the Montgomery County Public Ethics Law.

Having determined that a police officer would be violating the ethics law by accepting a rent discount from a Montgomery County apartment complex, the Commission must now address your request for a waiver. Section 19A-8 authorizes the Commission to grant a public employee or a class of public employees a waiver of the prohibitions of the ethics law if the Commission finds that:

¹ Section references are to the Montgomery County Public Ethics Law, Chapter 19A, Montgomery County Code (1984).

- “1. the best interest 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 Ethics Commission understands that police officers are normally assigned to work within a specific district. Accordingly, a police officer in the ordinary course of performing his or her duties does not directly regulate each and every business within the County. The Commission is also mindful that these rental inducements increase the presence and visibility of police officers by encouraging officers to reside within the County. The Commission agrees with you that this increased presence provides a public benefit. The Commission concludes that allowing a police officer to accept a rental inducement is in the best interest of the County. The Commission also concludes that the importance of a County police officer performing his or her official duties outweighs the potential or actual harm of any conflict of interest that might result from accepting a rental inducement if the inducement is offered by a business that does not operate within the district to which the officer is assigned. Finally, the Commission concludes that granting a waiver would not give a police officer an unfair advantage in competing for an apartment with other members of the public.

The Commission grants, therefore, a waiver to allow a police officer to accept a rental inducement from an owner or manager of an apartment complex if the person or entity providing the inducement does not own or operate a business within the district to which the officer is regularly assigned. For example, if a management company that operates in multiple police districts offers a rental inducement, police officers who are assigned to those districts would be precluded from accepting the inducement. This waiver is also conditioned on the police officer reporting the inducement received to the Montgomery County Ethics Commission and the Chief of Police. The Commission reserves the right to review and revise this waiver based on any new information that may come to the attention of the Commission.

Three additional limitations regarding this opinion and waiver must be noted:

- A. This opinion and waiver apply only to rental inducements in which the police officer is not required to provide any service or other benefit to the person or entity providing the inducement. Benefits given in exchange for services require outside employment approval.
- B. Police officers who are not assigned to a specific district are not covered by this waiver and must apply for a specific waiver in order to receive a rental inducement.

- C. This opinion and waiver apply only to the provisions of the Montgomery County Public Ethics Law. Any Police Department policy that may apply to police officers receiving gifts and the implementation of that policy are not affected by this opinion and waiver.²

Finally, the Commission would like any police officer who is contemplating accepting a rental inducement under this waiver to note that reassignment to a different police district may result in having to either forego the rental inducement or move his or her residence.

² See, Montgomery County Police Department Directive, DR 82-55, Function Code 300.