

[Waiver 1992-1]

W-92-29

MEMORANDUM

March 18, 1992

TO: Margaret Knill
Council Legislative Analyst

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

RE: Request for Advisory Opinion and Waiver

The Ethics Commission has received a memorandum from Margaret J. Knill, a Legislative Analyst for the County Council, dated January 27, 1992, requesting an advisory opinion and waiver. Based on the January 27th memorandum and information supplied orally by Knill to the Ethics Commission's general counsel, the Ethics Commission understands the facts surrounding this request as follows:

Knill was recently elected the President of Manor Village Homes Association, a common ownership community. Knill is also an ex-officio, non-voting member of the Commission on Common Ownership Communities (CCOC).

CCOC was established by Bill 44-89. CCOC has 15 voting members; according to Bill 44-89, six of these voting members should be selected from residents of common ownership communities. Bill 44-89 specifically provides that the voting members may include members of the governing boards of common ownership communities. Bill 44-89 also provides that the membership of CCOC includes six ex-officio, non-voting members. Among those six, one must be a designee of the County Council. Knill was appointed by the Council to be its designee on CCOC.

Knill was selected by the Council because of her expertise in issues regarding common ownership communities. Knill acquired this expertise by serving as the staff support person on a task force which recommended adoption of Bill 44-89.

At the time of her appointment as an ex-officio member of CCOC, Knill informed the Council that she was a member of the governing board of Manor Village Homes Association. Subsequent to her appointment by the Council, she was elected President of Manor Village Homes Association. As President, Knill remains a member of the governing board but also exercises certain additional administrative powers.

Bill 44-89 provides that the duties of CCOC include advising the County Council and County Executive on matters involving common ownership communities and recommending programs, procedures or legislation as may be necessary. The Commission, through panels, also is authorized to hear disputes between members of common ownership communities and the governing body of the common ownership

community. Ex-officio members, however, are not eligible to be a member of a hearing panel.

Bill 44-89 authorizes the County Executive, after receiving advice from CCOC, to promulgate a regulation imposing a fee on common ownership communities to fund the operations of CCOC and the Office on Common Ownership Communities. Under Bill 44-89, fees may only be imposed on a per unit basis or on the basis of services actually used.

Knill has asked if her participation as an ex-officio member of CCOC constitutes a conflict of interest and, if so, she has asked for a waiver.

Section 19A-11 of the Montgomery County Public Ethics Law prohibits a public employee from participating in any matter if the public employee knows that the matter may involve an entity of which the public employee is an officer or director.¹ The Ethics Commission concludes that Knill's participation as member of CCOC at the same time that she is the President of an entity that may be directly impacted by the recommendations made by CCOC constitutes a conflict of interest under Section 19A-11.

Section 19A-8 authorizes the Ethics Commission to grant a waiver from the prohibitions of Section 19A-11 if the Commission finds that:

- “(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.”

In considering these criteria, the Ethics Commission finds the following factors persuasive:

1. The County Council appointed Knill as its designee to serve as an ex-officio, non-voting member on CCOC. The Council knew at the time of Knill's appointment that she was a member of the governing body of Manor Village Homes Association. Knill's appointment was based on her expertise with common ownership community issues.

2. Bill 44-89 clearly contemplates that members of governing boards may serve as a voting member on CCOC. As an ex-officio, non-voting member of CCOC, Knill's role is limited to participating in discussions.

3. The Ethics Commission was concerned that Knill's participation on CCOC could potentially result in an unfair advantage being given to Manor Village

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

Homes. However, considering both the size and diversity of the CCOC's voting membership, the Commission believes that this problem may be overcome by requiring Knill to disclose to the members of CCOC that she holds an office on the governing board of Manor Village Homes Association.

In light of these factors, the Ethics Commission concludes that the criteria for granting a waiver have been met.

Accordingly, the Ethics Commission grants a waiver to allow Margaret J. Knill to participate as an ex-officio, non-voting member on CCOC subject to the following condition: Knill must inform, in writing, the members of CCOC of her office on the governing board of Manor Village Homes Association. A copy of this notification must be sent to the Ethics Commission.

The Ethics Commission trusts that this advisory opinion and waiver have been responsive to your inquiry. If you have any questions regarding this matter, please contact the Ethics Commission.