

[Waiver 1992-12]
W-92-43

December 14, 1992

Kenneth P. Norkin
[Address withheld]

Re: Request for Waiver

Dear Mr. Norkin:

The Ethics Commission has reviewed your request for a waiver dated October 23, 1992. Based on your waiver request, the Commission understands that facts as follows:

You are a member of the Historic Preservation Commission (HPC). Members of the HPC are volunteers who receive no compensation from the County.

The County's Office of Economic Development (OED) has expressed an interest in obtaining services from RMR & Associates (RMR) to provide public relations services regarding the County's Economic Development Program. RMR, in turn, has expressed an interest in contracting with you to provide writing and editing support in performing its contract with the County. You anticipate that the value of your contract with RMR would be under \$1,000. The topics you would be dealing with under your contract with RMR are not related to matters which would come under the jurisdiction of HPC.

Section 11B-52 states:

Unless authorized by law or the Ethics Commission under Chapter 19A, a person transacting business with the County must not employ a public employee while the employee is a public employee. Public employee and employ as used in this section are defined in Chapter 19A, Ethics.¹

Section 19A-4(g) defines employ as "engaging in an activity for compensation." Section 19A-2 provides that the ethics law is to be liberally construed to accomplish the purpose of enhancing public confidence that County business is being conducted on an impartial basis. Accordingly, the Ethics Commission concludes that Section 11B-52 prohibits a public employee not only from entering into a traditional employer/employee relationship with a County contractor but also prohibits a public employee from entering into an independent contractual relationship to provide services for compensation to a County contractor. Therefore, Section 11B-52 prohibits RMR from subcontracting to you any of its work under the OED contract.

Section 19A-8 authorizes the Commission to grant a waiver from the prohibitions of Section 11B-52 if the Commission finds that:

¹ Section references are to the Montgomery County Code (1984).

- (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.

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

1. You serve as a member of HPC on a voluntary basis and without compensation. You are in the business of providing writing and editorial services; providing these services to RMR is, therefore, in the normal course of your vocation. The Ethics Commission believes that it is in the best interest of the County to allow volunteers to pursue their livelihood with minimal interference by the County.
2. The editorial services that you would perform for RMR are not related to matters in which you would be asked to participate as a member of HPC. Accordingly, the potential for any conflict of interest between providing services to RMR under a contract with OED and your duties as a member of HPC is remote.
3. The Commission does not believe that granting you a waiver would provide you with an unfair advantage over other members of the public.

Accordingly, the Ethics Commission grants you a waiver to provide writing and editorial services to RMR under a County contract to assist OED in promoting the County's economic development program. This waiver is conditioned on your not accepting any assignment on a specific matter which may come before the HPC.

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