

[Waiver 1992-3]
W-92-31

MEMORANDUM

March 18, 1992

TO: Pete Holt, Director
Department of Addiction, Victim, and Mental Health Services

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

RE: Waiver Request for Chandler Scott McMillen

Pete Holt, Director, Department of Addiction, Victim, and Mental Health Services, has written to the Ethics Commission requesting a waiver to allow Chandler Scott McMillin to serve as a voting member on the Alcohol and Other Drug Abuse Advisory Council (AODAAC). Based on Holt's memorandum dated February 14, 1992, the Ethics Commission understands the factual background of Holt's request for a waiver is as follows:

The AODAAC was established by Emergency Bill 40-91 which became law on October 10, 1991. Bill 40-91 provides for 16 voting members and 12 non-voting members who are appointed by the County Executive and confirmed by the County Council. The AODAAC is charged, among others, with the following responsibilities:

1. Identifying local alcohol and other drug abuse program needs;
2. Assisting in the development of an annual County alcohol and other drug abuse plan;
3. Recommending appropriate allocation of funds to support alcohol and other drug abuse programs; and
4. Issuing an annual report that includes an identification of actions needed to improve local alcohol and other drug abuse programs.

On behalf of the County Executive, a selection committee has interviewed candidates for appointment to AODAAC. The selection committee would like to recommend the appointment of Chandler Scott McMillin to AODAAC. Mr. McMillin has a national reputation as an expert in the field of addiction treatment and is the author of several books on the subject.

The reason you have requested a waiver from the Commission is that Mr. McMillin is the Director of the Addiction Treatment Center of Suburban Hospital. The County currently has a contract with Suburban Hospital (Contract No. 15548BD) which

is administered through the Department of Addiction, Victim, and Mental Health Services. Under the contract, Suburban Hospital provides out-patient addiction treatment services to clients referred by the County. Suburban is one of four contractors providing this service. Suburban Hospital receives compensation under the contract by collecting from each referral a fee. County funds are not paid to the contractor. Suburban Hospital may receive up to 600 referrals per year. The top fee that a client pays under the contract is \$572. Approximately 10% of the clients are indigent and thus do not pay a fee.

Section 19A-11(a) provides that, unless permitted by a waiver, a public employee must not participate in any matter that affects the property or a business in which the public employee has an economic interest.¹ Section 19A-11(b) specifically prohibits a public employee from participating in a matter that involves a business which employs the public employee. Section 19A-4 defines a public employee as any person appointed to a County committee whether or not the person is compensated. Section 11B-52 prohibits any entity from employing a public employee at the same time that the entity has a contract with the County.

The Ethics Commission believes that Mr. McMillin's participation on AODAAC would violate Section 11B-52, and, to the extent Mr. McMillin participated in formulating AODAAC recommendations concerning addiction treatment programs, his participation would violate Section 19A-11.

Section 19A-8 authorizes the Ethics Commission to waive the provisions of Section 19A-11 and 11B-52 if the Commission finds:

- “(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 Commission finds the following factors persuasive:

1. Bill 40-91 expressly encourages the appointment of a professional who treats alcoholism or other drug abuse to AODAAC. This legislation clearly indicates that it is in the County's best interests to have as a member of AODAAC an individual with demonstrated expertise in the field of addiction treatment, even though that individual may benefit from County programs which are evaluated by AODAAC.

2. The Director of Addiction, Victim, and Mental Health Services believes that Mr. McMillin's expertise would greatly benefit AODAAC.

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

3. The contract the County has with Mr. McMillin's employer does not involve the expenditure of public funds.

4. The Commission believes that if Mr. McMillin discloses his employment relationship with Suburban Hospital and the nature of the contract between Suburban Hospital and the County to the County Executive, the County Council and, if appointed, AODAAC, the potential for a conflict of interest or unfair advantage to Mr. McMillin will be minimal.

Under these circumstances, the Ethics Commission believes that the importance to the County of Mr. McMillin sharing his expertise with AODAAC outweighs any potential conflict of interest and that there will be no unfair advantage given to Mr. McMillin over other members of the public. Accordingly, the Commission concludes that the criteria for granting a waiver have been met.

The Ethics Commission grants a waiver to allow Mr. McMillin to serve as a member of AODAAC subject to the following condition: Mr. McMillin must disclose, in writing, to the County Executive and the County Council his employment relationship with Suburban Hospital and the nature of the contract between the County and his employer. If appointed, Mr. McMillin must also inform, in writing, the members of AODAAC of his employment relationship with Suburban Hospital and the nature of the contract between the County and Suburban Hospital. A copy of this notification must be forwarded to the Ethics Commission.

If you have any questions regarding this matter, please contact the Commission.