

[Waiver 1995-3]

October 18, 1995

Carol A. Mehrling
Chief of Police
2350 Research Boulevard
Rockville, Maryland 20850-3294

Re: Advisory Opinion and/or Waiver Request

Dear Chief Mehrling:

You have requested the Ethics Commission to review a new program in which the Housing Opportunities Commission (HOC) provides a dwelling unit at a reduced rent to a police officer and his family in accordance with Federal Housing and Urban Development (HUD) criteria. A copy of the lease and other supporting materials were included with your request. Also, the first applicant for the program, Officer John A. Williams, appeared at the Ethics Commission's June meeting along with representatives of the HOC and provided the following background information.

The HOC receives grant funds from HUD for purposes of adding certain services to their residential properties, such as drug treatment programs. Usually, a resident must meet HUD-issued income limits and pays rent equal to approximately one-third of their income. Police officers cannot qualify for the housing, because their incomes exceed the eligible limits. To promote the influence of the police in these areas and to provide positive role models, the HUD recently initiated a program whereby HOC housing would include one unit designated for a police officer and the officer would not have to meet the eligibility requirements based upon income. Rather, the sole requirement would be that the individual be employed as a police officer. The program is being implemented by HOC in Montgomery County, and HOC has established a rent of \$50 for a police officer participant. The Federal program specifically permits the HOC to set the rent for the police officer at a reasonable rate, which may be a flat amount not related to the officer's income. The officer pays his own utilities and the HOC receives no County funding for the rental units, but only some funding for salaries and services of the HOC. The operation costs are funded by HUD. The program is not a substitute for resident managers, but is intended to instill a sense of community in the housing facilities and to promote the local community policing efforts.

The proposed arrangement presents two possible issues under the Ethics Law. First, the reduced rent for a housing unit could be considered a gift,¹ because the officer pays rent that is lower than his income would support if the one-third calculation were

¹ While it is not clear whether the Federal government is among the entities from whom a gift may not be accepted, for the purpose of this opinion only, the Commission has assumed (but not decided) that it would be considered such a prohibited gift.

applied. §19A-16 of the Montgomery County Code 1994, as amended. Alternatively, the arrangement could be considered to be secondary employment, because the rental unit is provided to a police officer in return for his presence in the community and interaction with the other residents.² To the extent that the situation is either a gift or secondary employment, a waiver is required.

The criteria for the grant of a waiver differ for a gift and for secondary employment. For acceptance of an otherwise prohibited gift, a waiver may be granted if the Ethics 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.

(Emphasis supplied.) §19A-8(a) of the Montgomery County Code, 1994, as amended.

In this case, the “gift” is from the Federal government through the HUD grant, which pays the cost of the housing unit, and it is given solely because the public employee is a police officer who has agreed to live within the low income housing project. The Federal Government’s reason for giving this “gift” is in order to further its own program goals—goals which are shared by Montgomery County. Accordingly, the Ethics Commission has determined that a waiver may be granted to permit acceptance of this gift, because it is in the best interests of the County to grant the waiver. The County has a strong interest in promoting safety in all neighborhoods and in providing strong role models for children and young adults. Moreover, the potential harm of any conflict of interest is minimal, because the police officer has an interest in enforcing the law generally and the interest may be even greater when it involves his own residence. Finally, granting the waiver does not give a police officer an unfair advantage over other members of the public. The assistance provided by the HOC to enable families to have housing is hoped to be an interim measure that provides a bridge during difficult financial times. Moreover, the service to the community obtained by making one unit available to the police officer provides a greater gain to the community than the one housing unit that is taken out of circulation.

To the extent that the housing arrangement may constitute secondary employment, separate approval would have to be obtained for the employment. In conjunction with such a request, the following criteria would have to be established in order for the Ethics Commission to grant a waiver:

²In support of this program both HOC and the police have argued that the visibility of the officer deters certain activities while providing a positive role model for the residents of the community.

- (1) the waiver is needed to ensure that competent services to the County are timely and available;
- (2) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or
- (3) the proposed employment is not likely to create an actual conflict of interest.

(Emphasis added.) §19A-8(b) of the Montgomery County Code 1994, as amended. The Commission finds that the proposed “employment” is not likely to create an actual conflict of interest.

As informally communicated to you immediately following our June meeting, the Ethics Commission has granted Officer Williams’ request to participate in the HOC program at Middlebrook Square, but has some concerns about the manner in which he was selected. In that regard, the Commission understands that the HOC approached the District Commander of the Germantown District and the Chief of Police to seek permission to offer the housing unit to Officer Williams. It is not clear, however, from the information provided, whether notice of the availability of the unit was provided to all officers in the District or even to officers working in other districts in the County. Such notice, along with a formal selection process, is needed in order to ensure that an “unfair advantage” is not given to any particular police officer and in order to avoid any “appearance of impropriety”. Accordingly, the Commission suggests that all future housing arrangements be conducted in accordance with some specified procedure for application and selection, which should be established by the Police Department. After selection, each officer should apply to the Ethics Commission for a waiver on a case-by-case basis.

If you have any other questions regarding this decision, please feel free to contact the Ethics Commission.

Sincerely,
[signed]
JAY L. COHEN, Chair
Montgomery County Ethics Commission

cc: Officer John A. Williams, Montgomery County Police Department
Barbara McNally, Executive Secretary, Montgomery County Ethics Commission