

[Waiver 1995-4]

October 18, 1995

Kenneth B. Tecler, Esquire
Chen, Walsh, Tecler & McCabe
[Address withheld]

Re: Request for Advisory Opinion and Waiver

Dear Mr. Tecler:

You have requested advice and a waiver from the Ethics Commission regarding the Vice-Chair of the Housing Opportunities Commission (HOC) and have provided the following information in support of your request. The Vice-Chair also is employed as the Executive Director of the National Association of Housing and Redevelopment Officials (NAHRO). NAHRO is an organization of organizations that are in the business of acquiring, maintaining, and operating public housing and administering programs for other assisted housing throughout the nation. Also, NAHRO provides training and other membership services. Its members include governmental agencies, attorneys, developers, consultants, housing experts and contractors. The Executive Director does not have daily contact with all of the members of NAHRO, nor does he know all of the members personally, but he represents them in relation to issues raised at the Department of Housing and Urban Development and in Congress.

The HOC is seeking a replacement for its executive director, and the Commissioners will be conducting a nationwide search for the best qualified candidate for the position. It is possible that the final candidates may include members of NAHRO. The Vice-Chair and other Commissioners want him to be able to participate in the selection process. The Vice-Chair has invaluable knowledge regarding housing authorities and their staffs and is essential to the Commission in making a final decision. The position of executive director of the HOC is significant in that it has broad authority for conducting the operations of the agency, which include operation of public housing, administration of the Section 8 program for the County, housing finance for both single family and multi-family properties, resident services and acquisition, construction and operation of mixed income housing facilities. The seven-member Commission oversees these activities.

You have indicated that the Vice-Chair's participation in the selection process is of overriding importance to the County and outweighs the likelihood of the possible injury that may occur. Moreover, he has offered to disclose to the other Commissioners the potential conflict and to identify those final candidates who are members of NAHRO. The importance of the executive director position on County policy and operations is more significant than the relatively small membership dues paid by NAHRO members, which may or may not be affected by the involvement of the Vice Chair in the selection process.

Applicable Provisions of the Ethics Law

As you know, the issue here involves the requirement of §19A-11(a)(1)(B) of the Ethics Law, which states:

Unless permitted by a waiver, a public employee must not participate in:

- (1) any matter that affects, in a manner distinct from its effect on the public generally, any:

* * *

- (B) business in which the public employee has an economic interest; . . .

Because the definition of *public employee* set forth in §19A-4(m)(4) of the Ethics Law includes a member of the HOC, a waiver must be obtained in accordance with the following requirements by establishing 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.

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

Analysis

Based on the information provided by you, the Commission finds that the participation of the Vice-Chair of the HOC in the selection process for a new executive director for the HOC is in the best interests of the County. You have advised us that the Vice-Chair has significant expertise that is essential to the hiring of an individual who will handle the housing mandate of the HOC in Montgomery County. Based on your representations, it appears to the Commission that the importance of the Vice-Chair in assisting in this process as part of his duties with the HOC outweighs the potential harm of a conflict of interest. It is not apparent that the Vice-Chair has specific knowledge of the qualifications of the members of NAHRO or that he would show a particular preference for those members in choosing the executive director for the HOC. Moreover, the Vice-Chair is one of seven HOC members and will not be the sole voice in making such a decision. Finally, granting the waiver will not give the Vice-Chair an unfair advantage over other members of the public, because there has been shown no connection between his income as executive director of NAHRO and the selection of an executive

director for HOC, nor any other connection between the two entities that would confer a particular benefit or advantage upon the Vice-Chair.

As a result, the Commission grants the waiver requested, with the following conditions:

1. The Vice-Chair must disclose his employment with NAHRO to the HOC Commissioners.
2. The Vice-Chair must circulate the request for waiver and this grant of the waiver to the HOC Commissioners.

In the event that the facts or circumstances outlined in your request change, this approval may need to be reevaluated. At the present, however, there is no information that suggests that the participation of the Vice-Chair will present a problem.

If you have any questions concerning this decision, please do not hesitate to contact the Commission.

Sincerely,
[signed]
Jay L. Cohen, Chair
Montgomery County Ethics Commission

cc: Barbara McNally, Executive Secretary, Montgomery County Ethics Commission