

**[Waiver 1998-2]**

**MONTGOMERY COUNTY ETHICS COMMISSION**

**WAIVER**

**February 27, 1998**

**Request by County employee Duc Duong**

The Ethics Commission has reviewed a request from an employee for permission to accept an employment offer with the High Technology Council (HTC) of Maryland after taking an early retirement offer.

**PERTINENT FACTS**

The following information was offered in support of the request:

The employee is an Assistant Director and Chief of Business Retention in the Department of Economic Development with primary responsibility for developing and implementing programs aimed at facilitating business expansion and attraction, including the technology business incubator (MCTEC) which the employee helped to initiate in 1992.

As a public employee, responsibilities in connection with the MCTEC initiative were as follows:

1. Developed the business plan to establish MCTEC and requested County funding for it;
2. Negotiated the lease to locate MCTEC at its current address;
3. Drafted the agreement, between the Department of Development and the HTC, under which the HTC manages MCTEC;
4. Served on the MCTEC Advisory Board selecting applicants for the incubator program;
5. Reviewed MCTEC financial reports; and
6. Work on the expansion of MCTEC.

In October, 1997, you were solicited by the HTC to the position of Director of Industry

Networks and Initiatives, which involves the following duties and responsibilities:

1. Managing the operations and activities of area high technology organizations and networks;
2. Assisting network steering committees in developing positions and agendas for legislative action;
3. Identifying programs that networks might wish to undertake; and
4. Transitioning MCTEC into a permanent facility at the Shady Grove Life Sciences Center.

### **APPLICABLE LAW**

The Montgomery County Ethics Law restricts the employment of former county employees as follows:

- (a) A former public employee must not accept employment or assist any party, other than a County agency, in a case, contract, or other specific matter for 10 years after the last date the employee significantly participated in the matter as a public employee.
- (b) For one year after the effective date of termination from County employment, a former public employee must not enter into any employment understanding or arrangement (express, implied, or tacit) with any person or business that contracts with a County agency if the public employee:
  - (1) significantly participated in regulating the person or business; or
  - (2) had official responsibility concerning a contract with the person or business (except a non-discretionary contract with a regulated public utility).
- (c) Significant participation means direct administrative or operating authority to approve, disapprove, or otherwise decide government action with respect to a specific matter, whether the authority is intermediate or final, exercisable alone or with others, and exercised personally or through subordinates. It ordinarily does not include program or legislative oversight, or budget preparation, review, or adoption.

Montgomery County Code, §19A-13.

However, after receiving a written request, the Commission may grant a waiver of the prohibitions of subsection 19A-13 if it finds that:

- (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.

Montgomery County Code, §19A-8(b).

### **WAIVER DECISION**

Clearly, the employee significantly participated in a host of matters relating to HTC, including drafting the agreement between HTC and the Department of Economic Development under which the HTC manages MCTEC. Therefore, the employee would be prohibited from accepting the proposed employment unless the Commission waived the prohibitions of §19A-13.

However, because the HTC, although not an agency of county government, is a non-profit entity created by the County to serve as a partner with high technology businesses in the County and to promote County interests, the Commission concluded that the employee's proposed employment by HTC was not likely to create an actual conflict of interest. To the contrary, the new position, in many ways, would be so consistent with his former public duties as to be virtually a continuation of that employment.

After careful consideration of the law, as regards this particular case, the Commission granted a waiver of the provisions of §19A-13.