

MONTGOMERY COUNTY ETHICS COMMISSION

WAIVER DECISION

The former Chief of the Retail Operations Division of the Department of Liquor Control ("the Requester") has requested a waiver of Section 19A-13 of the Montgomery County Code, which prohibits former public employees who are subject to the Montgomery County Public Ethics Law from accepting post-county employment under certain circumstances. In particular, the Requester desires a waiver so that he may seek employment with a liquor/wine industry producer or supplier. The request is supported by a letter from the Department of Liquor Control's Acting Director.

Pertinent Facts

Based on the requester, the supporting letter, and a Summary Position Description form, the pertinent facts are as follows:

1. The Requester, who is 55 years old, has been in the beverage alcohol business for 30 years, and has been employed by the Montgomery County Department of Liquor Control for approximately the past twenty-one years. Until recently, he was employed as the Chief of the Retail Operations Division of the Department.
2. The Summary Position Description form describes the primary purpose of the Requester's position as follows:

This is a professional management position with the primary purpose of the developing and maintaining programs of the Department of Liquor Control (DLC) that direct the activities of the retail division. Those activities include the utilization of financial, capital, and human resources; policy formulation and implementation; strategic business planning; providing general assistance to the Director in planning, organizing, and coordinating the various programs and activities of the Department; selecting and managing the Department's product portfolio; and providing for the proper management of the daily operations of both County and contractor-operated retail stores.
3. As a result of a reorganization, the Requester's position as Chief of the Retail Operation Division has been abolished, effectively July 1, 2001, and the Requester has elected to take a discontinued service retirement.
4. As of March 5, 2001, the Requester "ceased making any decisions regarding companies and products purchased by the department and . . . turn over [his] responsibilities to . . . the new Chief, Operations Division." Until July 1, 2001, the Requester occupies "an advisory status to answer any question from those assuming [his former] duties and responsibilities."
5. The beverage alcohol industry represents the Requester's best chance for gainful employment commensurate with his age and experience.
6. The County Government has a monopoly in the sale of beverage alcohol in the County. Under current law, the County's Department of Liquor Control is the only

entity to which a producer or supplier may sell beverage alcohol products in the County.

7. As the chief of the Retail Operations Division, the Requester has had substantial responsibility for the purchase of all beverage alcohol during his tenure as Chief of the Retail Operations Division.
8. It would be virtually impossible, therefore, for the Requester to work in the wine/liquor business without being employed by a company from which the Montgomery County Department of Liquor Control has purchased beverage alcohol during his tenure as Chief of the Retail Operations Division.
9. To exclude the Requester from employment by any company that has done business with the Department of Liquor control during the Requester's tenure as Chief of the Retail Operations Division would effectively ban him from employment in the beverage alcohol business.
10. The Acting Director of the Department "foresee[s] no conflict of interest for Montgomery County if [the Requester] is allowed to gain employment in this industry."

Applicable Law

This request implicates Section 19A-13 (Employment of former public employees) and 19A-8 (Waivers) of the Montgomery County Public Ethics Law. It is also may implicate Section 19A-15(a) (Disclosure of confidential information).

Section 19A-13 provides:

- (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 the 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.

Section 19A-8 provides, in pertinent part:

- (d [ed.: c]) After receiving a written request, the Commission may waive the prohibitions of Section 19A-13 if it finds that:
 - (1) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or
 - (2) the proposed employment is not likely to create an actual conflict of interest.
- (e) The Commission may impose appropriate conditions to fulfill the purposes of this Chapter when it grants a waiver.
- (f) The Commission must disclose to the public any waiver that it grants. . . .
- (g) The Commission must include the pertinent facts in each waiver.

Section 19A-15(a) provides, in pertinent part:

Except when authorized by law, a public employee or former public employee must not disclose confidential information relating to or maintained by a County agency that is not available to the public. A public employee or former public employee must not use confidential information for personal gain or the gain of another.

Decision

1. Based on the pertinent facts as set forth in the request and the Acting Director's letter of support, the Montgomery County Ethics Commission has concluded that the proposed employment is not likely to create an actual conflict of interest, and that failing to grant the waiver may reduce the ability of the County to hire or retain public employees who are highly qualified for this kind of work. The Commission, therefore, under the facts of this case, waives the prohibitions of Sections 19A-13 as requested, so as to permit the Requester to enter into post-County employment with a liquor/wine industry producer or supplier.
2. The Commission cautions, however, that the Requester has not sought and the Commission has not granted a waiver of the prohibitions of 19A-15(a) regarding "confidential information relating to or maintained by a County agency that is not available to the public." Indeed, neither the request nor the supporting letter specifically addresses 19A-15(a) or indicates whether the Requester possesses such information. Therefore, although the Requester asserts that he is not, by reason of his County experience, "in a position to benefit" potential employers in the industry, the Commission notes that it has not waived the prohibitions of Section 19A-15(a), and the Requester continues to be bound thereby—unless and until he seeks and receives a waiver of those particular prohibition.
3. This waiver decision shall be disclosed to the public as required by law.

FOR THE COMMISSION:

[signed]
Walter A. Scheiber, Chair

April 24, 2001