

Proposal to Cure Possible Violation of the Ethics Law

Stipulations of Law and Fact

The Montgomery County Public Ethics law states “our system of representative government depends in part on the people maintaining the highest trust in their officials and employees. The people have a right to public officials and employees who are impartial and use independent judgment. . . The confidence and trust of the people erodes when the conduct of County business is subject to improper influence or even the appearance of improper influence. . . .” (19A- 2(a),(b)).

The Commission's authority pursuant to the ethics law includes the application and enforcement of the Ethics provisions set forth in Chapter 19A of the County Code, including:

- Section 19A-11(a)(2)(E), which prohibits a public employee from participating in any matter that a public employee knows or reasonably should know involves another party in which the public employee has an economic interest or contractual interest that could reasonably result in a conflict between private interests and public duties;
- Section 19A-12(a) prohibits a public employee from engaging in any other employment without approval from the Ethics Commission, and 19A-12(b) prohibits, unless waived by the Commission, (1) an employee from being employed by any business that negotiates with the public employee's agency, and (2) from holding a employment relationship that could reasonably be expected to impair the public employee's impartiality and independence;
- Section 19A-14(a), which prohibits a public employee from intentionally using the prestige of office for private gain or the gain of another;
- Section 19A-14(b), which prohibits a person from using an official County or agency title in connection with any private enterprise (unless expressly authorized by the CAO); and
- Section 19A-14(c), which prohibits a public employee from using an County agency, facility, property or work time for personal use or for the use of another person.

On September 4, 2019, the Montgomery County Ethics Commission asked the Montgomery County Inspector General to conduct an investigation into allegations that

Andrew Kleine violated the Montgomery County ethics law. The Inspector General completed the investigation of the matter and provided a copy of a report dated December 12, 2019, to the staff of the Ethics Commission. A form of the Inspector General Report is attached as Attachment A. Attachment A was redacted by Ethics Commission staff to remove the names of the witnesses interviewed and any accompanying text that might disclose a witness's identity. Attachment A sets forth factual information by preceding each such item with a bullet point.

Mr. Kleine stipulates that the non-redacted bullet-pointed facts presented in Attachment A are true. With respect to the remainder of Attachment A, which provides opinions and conclusions of the Inspector General's staff, Mr. Kleine believes this Proposal sets forth the appropriate reference point for consideration.

The Ethics Commission regulations in the Code of Montgomery County Regulations at 19A.09.01.02.5 provides that Commission staff may ask "the person responsible for the possible violation . . . if he or she would like to propose a cure to the Commission to remedy the possible violation. . . . Commission staff must present any such proposal to the Commission. The Commission may accept or reject the proposal" Pursuant to this authority, if the Commission accepts the proposal, upon satisfaction of the terms of the proposal, Commission staff can close the matter. This "Proposal to Cure" is made pursuant to this regulatory authority. It is acknowledged that if accepted by the Ethics Commission, this document will become a public document.

Prior to his service with the County, Andrew Kleine worked in Baltimore City and helped implement a budget strategy focused on achieving outcomes. As a Baltimore City employee he worked with two Baltimore City contractors: Healthy Outcomes, Inc. ("Balancing Act") and Clear Impact, LLC ("Clear Impact") that provided services and software to help implement strategic approaches to budgeting. After leaving Baltimore City but before the 2018 election: (a) Mr. Kleine created Andrew Kleine Consulting, LLC ("the Company"); (b) the Company entered into formal contracts with Balancing Act; (c) Mr. Kleine had an informal, mutually beneficial arrangement with Clear Impact; and Mr. Kleine published "City on the Line" ("the Book") in October of 2018 about the implementation of the budget strategy in Baltimore City. Mr. Kleine believes it was to a substantial degree his vision for a strategic approach to achieving outcomes that resulted in his becoming involved with Marc Elrich's campaign to become the Montgomery County Executive, his subsequent appointment to lead County Executive-Elect Elrich's transition and his being appointed as Chief Administrative Officer. Mr. Kleine was named to run the transition of County Executive-Elect Elrich on November 13, 2018, and was confirmed as Chief Administrative Officer of Montgomery County on December 11, 2018.

Balancing Act

Mr. Kleine, through the Company, had two contracts for consulting services with Balancing Act that were entered into on June 1, 2018. Balancing Act also sponsored an event in Denver in September of 2018 promoting the Book. The Balancing Act contracts included a sales representation agreement that would have given the Company a share of revenue from sales he was involved in. The contracts with Balancing Act were terminated on January 24, 2019, without the Company or Mr. Kleine ever deriving any income from the contracts. The Company's website identified "Balancing Act" as a partner until late 2019.

The incoming administration was under a looming budget deadline. In November 2018, after he had been appointed to lead Mr. Elrich's transition and then when he became Chief Administrative Officer, Mr. Kleine was involved in establishing the relationship between the County and Balancing Act -- which at the time was the only vendor Mr. Kleine was aware of that offered the budgeting software in question. Mr. Kleine's involvement did not extend to the actual evaluation and selection process, which the OMB Director managed in all respects and which resulted in OMB's decision to purchase a one-year contract, in the amount of \$9,880, for Balancing Act's software on December 21, 2018.

Mr. Kleine understands that the ethics law prohibits him from participating in any matter with a business that he has a contract with, if the contract could reasonably result in a conflict between private interests and public duties. (19A-11(a)(2)(E)). Although Mr. Kleine never received any funds from Balancing Act, Mr. Kleine acknowledges that he violated this provision of the Ethics Law.

Mr. Kleine also understands that there is a general prohibition on using the prestige of office for private gain or the gain of another. He acknowledges that where an employee has an outside business relationship with an entity, promoting its business to the County can also be reasonably viewed as a misuse of prestige of office. He also acknowledges that given his status in the incoming administration, recommendations from him could carry substantial weight with those to whom he was making recommendations.

Subsequently, while he was attending the Government Financial Officers' Association annual meeting in Los Angeles CA in May 2019, Mr. Kleine spent approximately one hour signing copies of his book that had been purchased by Balancing Act and were being distributed at the Balancing Act table at the conference. There were 20 copies of the book that were signed and distributed. While royalties on these books were minimal (\$42), and his purpose for attending the conference was to recruit for Montgomery County's vacant Director of Finance position, Mr. Kleine now recognizes that his promotion of his book at the Balancing Act table mixed his private book promotional activity with his County service, which was a misuse of the prestige of office.

While having the book-signing was Balancing Act's idea and the gain was very small, Mr. Kleine further realizes there has to be a complete severance of his private business activities and his official duties.

Clear Impact

On July 1, 2018, Clear Impact paid Mr. Kleine \$5,000 toward book promotion expenses. In exchange, Clear Impact's logo is printed on the back cover of the Book. Clear Impact sponsored the Book because it includes content about Baltimore City's work with Clear Impact and the Turn the Curve strategic planning process that is central to its consulting practice. Clear Impact sponsored some of Mr. Kleine's book tour events in the fall of 2018, before the election of Mr. Elrich. Up until August of 2019, Clear Impact was identified on the Company's website as a "partner," although the Company and Clear Impact had no formal contractual relationship.

Prior to becoming a County employee,¹ in September and October of 2018, Mr. Kleine facilitated arrangements being made between Clear Impact and the County for transition services. In the very time-compressed transition period, and after becoming the Chief Administrative Officer, Mr. Kleine interacted with representatives of Clear Impact and with other County employees about strategic planning training and facilitation. During the relevant time periods, Clear Impact was, to Mr. Kleine's knowledge, the only source for training on Results Based Accountability ("RBA"), or "Turn the Curve," a data-driven strategic planning process. In his County capacity, Mr. Kleine has used RBA to plan for achievement of the County Executive's Priority Outcomes and departmental service improvement plans.

At Mr. Kleine's request, the Leggett Administration engaged Clear Impact in a \$10,000 non-competitive contract to facilitate the work of the Elrich Transition Team, starting the day after the election. Mr. Kleine saw this as necessary to complete the transition work in less than a month.

In May of 2019, the County entered into a contract for up to \$99,000 with Clear Impact. The contract was competitively bid, and Mr. Kleine, the head of the County's procurement system under Charter section 313 and section 11B-5 of the County Code, stayed at arm's length from the procurement process.

Mr. Kleine had no formal contractual relationship with Clear Impact, but acknowledges that because of Clear Impact's support of his book, any activities that he was involved in that related to the County's contracting with Clear Impact, including his promotion of

¹ Mr. Kleine served without compensation as a member of the County Revenue Authority ("the Authority") from September, 2015 until December, 2018, and is presently an *ex officio* member of the Authority. The Authority's principal focus is on County airport and golf course facilities. Members of the Authority are subject to the ethics law.

County activities that were likely to result in engagement of Clear Impact, was a potential conflict of interest pursuant to 19A-11(a)(2)(E) or a potential misuse of prestige of office under 19A-14(a). Mr. Kleine recognizes that he should have sought out ethics advice in advance of his activities that created these potential conflicts of interest or appearances of conflicts.

Book Promotional Activities

The Book was a useful reference in the implementation of Mr. Kleine's vision for budgeting in Montgomery County. As of September 30, 2019, the County and its employees had purchased 89 copies of the Book, although Mr. Kleine was unaware at the time that County funds were used to buy those books. Mr. Kleine is aware that because of his position as CAO, many employees had an interest in reading the Book to gain insight into the planning and budgeting methods he would bring to Montgomery County Government.

Mr. Kleine was invited on a few occasions to discuss the Book and his strategy for budgeting while he was at conferences or meetings he was attending in connection with his County work. Where these activities required use of County resources or of Mr. Kleine's title, or otherwise appeared to be conducted as part of Mr. Kleine's official duties, Mr. Kleine recognizes such activities constituted a misuse of County resources and/or a misuse of the prestige of Mr. Kleine's office. It should be noted that Mr. Kleine does not have a conventional work schedule. Mr. Kleine routinely works well in excess of the standard 40 hours a week and earns neither overtime nor compensatory time. But Mr. Kleine acknowledges that he failed to draw clear lines between his personal interests and his County duties as regards promotion of the Book.

At no time prior to August 2019 did Mr. Kleine seek advice from the County Attorney or the Ethics Commission concerning the government ethics implications associated with his relationships with the two entities, Balancing Act and Clear Impact, or the implications of implementing in Montgomery County a budget strategy that espoused the strategies explained in his Book. Notably, no one else in County government brought these matters to the attention of the Ethics Commission until late July 2019.

Mr. Kleine did seek outside employment approval from the Ethics Commission in late April of 2019 to engage in consulting and promotion of the Book through the Company. While the Commission approved the request on June 6, 2019, the Commission had not been informed of the relationships between Mr. Kleine, the Company, and Balancing Act, or Mr. Kleine and Clear Impact, the Book's relevance to the budget strategy being implemented in Montgomery County, and the lack of separation between promotional activities associated with the Book and Mr. Kleine's official position. In addition, Mr. Kleine recognizes that he should not have been engaged in any activity resulting in earned income (no matter how minimal) prior to receiving outside employment approval

in accordance with requirements in the ethics law. Mr. Kleine acknowledges that his doing so violated 19A-12 of the Ethics law.

In January 2019, Mr. Kleine terminated the Company's contracts with Balancing Act.

Mr. Kleine has removed references to Balancing Act and Clear Impact as "partners" on his personal business website.

Mr. Kleine will undertake the following additional actions:

Mr. Kleine forfeits and relinquishes the Commission's June 6, 2019, approval of Mr. Kleine's request for his company to perform outside consulting; during his service as a County employee, absent advice or a waiver from the Ethics Commission, he will not engage in any outside employment activities or promote the Book to County employees or to others. Mr. Kleine and the Company will not promote the Book on social media. The Book's existing website may be left in place, but may not refer in any way to Mr. Kleine's current service as the CAO nor to any entity that has or subsequently obtains a contract with, performs services for, or otherwise does business with, Montgomery County. The reference to Clear Impact as a "sponsor" will be removed from the Book's website.

Mr. Kleine will not be involved in any matter involving Balancing Act or Clear Impact without first obtaining advice from or a waiver from the Ethics Commission. Absent advice from the Ethics Commission, Mr. Kleine will not communicate with employees of Balancing Act or its affiliates or Clear Impact while he is a County employee, except to obtain agreement from Clear Impact to remove any reference to him and the Book from its website. (The County Attorney's aid will be sought in connection with the removal of the reference to the Book from Clear Impact's website.)

To address the County's expenditures of funds on his book; the small amount of royalties received by Mr. Kleine in connection with book sales to the County; work-related conferences or similar activities where Mr. Kleine spent any time engaged in book promotion; and all violations of the County ethics law concerning conflicts of interest in taking actions leading to the County's contracts with Clear Impact and Balancing Act, Mr. Kleine will pay \$5,000 (Five Thousand Dollars) within 30 (thirty) days of acceptance of this proposal by the Ethics Commission.

Mr. Kleine will direct the Chief Procurement Officer to ensure that the County purchases no additional copies of the Book.

The Commission will immediately close its investigation concerning the matters addressed in the Inspector General's December 12, 2019 report, without further proceedings. If the Proposal to Cure is accepted by the Ethics Commission, the acceptance will confirm an agreement that is binding on Andrew Kleine and the Ethics Commission only. Mr. Kleine recognizes that the Ethics Commission does not have any authority to bind any other agency, and Mr. Kleine also recognizes that the conduct referenced in this document may subject him to the imposition of civil and/or criminal penalties by other government authorities who are not a party to this agreement.

A failure to make the agreed-upon payment by Mr. Kleine will constitute a breach of this agreement and the County may use all authorities in Chapter VI of 19A and any other legal authority to obtain payment. The failure to abide the terms of this agreement may also result in the Ethics Commission in its sole discretion nullifying the agreement, allowing it to proceed as provided in the ethics law as though this agreement was never entered into. Because the Ethics Commission through its agreement to this proposal would be foregoing proceeding under the ethics law, Mr. Kleine waives any statute of limitations defenses should the Commission decide to proceed in the matter as a result of a breach of an agreement by Mr. Kleine. This agreement does not apply to any new information obtained by the Commission after the date of this agreement.

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| <u>/s/ Andrew Kleine</u> | <u>July 1, 2020</u> |
| Andrew Kleine | Date |

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| <u>/s/ Rahul Goel</u> | <u>July 1, 2020</u> |
| Rahul Goel | Date |
| Chair | |
| For the Montgomery County Ethics Commission | |

Attachment A: Redactions by Ethics Commission Staff from Word document provided by Office of Inspector General. This is not the complete, signed version of the document.

December 12, 2019

TO: The Ethics Commission

FROM: Megan Davey Limarzi, Inspector General

SUBJECT: Report of Investigation

During the summer of 2019, the Montgomery County Ethics Commission received complaints regarding apparent conflicts of interest on the part of Chief Administrative Officer (CAO) Andrew Kleine. The Ethics Commission requested, on September 4, 2019, that the Office of the Inspector General (OIG) conduct an investigation under §19A-9 of the Ethics Law. The OIG agreed on September 6, 2019 to conduct the investigation.

The Ethics Commission described the scope of the investigation as including Mr. Kleine's relationships with Clear Impact, LLC ("Clear Impact") and Balancing Act;¹ the arrangements concerning the publication and sale of Mr. Kleine's book, *City on the Line*; and dealings between the County and its employees with Mr. Kleine, Clear Impact, and Balancing Act, including purchases and sales of Mr. Kleine's book and related activities.

The results of the OIG's investigation are presented below. A timeline with more detail is included as an Appendix to this report, and work papers are being provided to the Ethics Commission.

I. The Ethics Law Applies to Public Employees

Montgomery County's Ethics Law applies to persons defined by the ethics law as "public employees," so a threshold issue regarding Mr. Kleine is to determine the date he became a public employee. Mr. Kleine has filled three roles in County government that could be considered to be covered by the Ethics Law's definition of "public employee."

First, beginning on September 29, 2015, Mr. Kleine was a member of the Montgomery County Revenue Authority. Revenue Authority members are public employees, under the Montgomery County Ethics Law. Mr. Kleine was a resident member of the Revenue Authority until he resigned in December of 2018². The Revenue Authority operates and finances projects for public use, including golf courses and airports.

Second, on November 13, 2018, County Executive-Elect Elrich introduced Mr. Kleine to the Transition Team as its chair. Certain people providing services to the County

¹ Engaged Public is a trade name registered to Healthy Outcomes, Inc., a corporation registered with the Colorado Secretary of State. Engaged Public does business as Balancing Act.

² He became an ex officio member as the CAO in January of 2019.

government without compensation are considered public employees under the Ethics Law. The Transition Team facilitated the transition in County government between the General Election and the inauguration of the new County Executive and Council.

Third, on December 11, 2018, the County Council confirmed Mr. Kleine's appointment as CAO. The CAO is compensated by the Montgomery County Government and is a public employee under the Ethics Law. There is evidence that Mr. Kleine knew much earlier that Mr. Elrich intended to appoint him as CAO if Mr. Elrich won the election.

Mr. Kleine's attorney has written that Mr. Kleine began County employment upon his confirmation by the County Council on December 11, 2018. The Ethics Commission can determine if Mr. Kleine became a public employee for the purposes of the Ethics Law on that date or on another date as early as September 29, 2015.

A. Mr. Kleine Became a Member of the Revenue Authority in 2015

Members of the Revenue Authority are included in the County Code's definition of "public employee," and the Ethics Laws apply to them. The Revenue Authority has five voting members, of which Mr. Kleine was one until he became the CAO, at which time he became an ex officio member.

Chapter 19 of the Montgomery County Code, the Ethics Law, states in §19A-4(m),

(m) Public employee means: ...

(4) *any member of the Revenue Authority, the Housing Opportunities Commission, or the Board of License Commissioners...*[emphasis added]

Chapter 42 of the County Code, which governs the Revenue Authority, similarly states in §42-12(d) "Members and employees of the Authority are subject to Chapter 19A."

The following facts relate to when Mr. Kleine became a member of the Revenue Authority:

- On September 29, 2015, Mr. Kleine's appointment to the Montgomery County Revenue Authority for a term of five years was confirmed by the County Council.
- Mr. Kleine resigned from the Revenue Authority as a resident member in December of 2018.
- As CAO, Mr. Kleine was appointed as an ex officio member of the Revenue Authority on January 29, 2019.

B. Mr. Kleine Chaired the Transition Team in November 2018

In his role as chair of the Transition Team, Mr. Kleine had access to confidential information and proposed ways to improve County government. Facilitation and funding for the transition team were provided by the office of the outgoing County Executive, and Mr. Kleine was appointed by and reported to the incoming County Executive, Marc Elrich.

County Code §19A-4(m) states in part,

(m) Public employee means: ...

(5) *any other person providing services without compensation to a County agency* if that person:

(A) exercises any responsibility for government-funded programs, procurement, or contract administration for an agency; or

(B) has access to confidential information of an agency that relates to government-funded programs, procurement, or contract administration. [emphasis added]

Section 19A-4(a) states:

(a) Agency or County agency means:

(1) any department, principal office, or office of the executive or legislative branch of County government;

The following facts relate to Mr. Kleine as chair of the Transition Team:

- County Executive-Elect Marc Elrich, like his predecessors, formed a transition team and appointed County residents to it.
- Money for the transition team was in the County budget, as it had been for previous transition teams. FY19 Budget's description of "Inauguration and Transition" states, "This NDA³ provides for a ceremony and smooth transition of the County Executive and County Council every four years."
- "The Transition Team's work involved...Reviewing the available data for each measure and assessing how we are doing, articulating 'the story behind the curve,' identifying potential partners who have a role to play in improving conditions, brainstorming ideas for what works to do better, and finally proposing and prioritizing ideas and strategies," according to a letter to County Executive Elrich in the Transition Report, written by Mr. Kleine, Chair of the transition team.
- On November 1 and 2, 2018, then-Assistant CAO Fariba Kassiri⁴ emailed County departments and County agencies, such as Montgomery County Public Schools, requesting transition briefing documents. Ms. Kassiri stated these would be kept "confidential" and "only shared with the County Executive-Elect and his/her selected officials."
- The CAO at the time, Mr. Timothy Firestine, emailed County Department and Office Directors on November 7, 2018 that then-Assistant CAO Kassiri was leading the transition for the Executive branch.
- The CAO and the Assistant CAOs work in the Office of the County Executive.

³ The FY19 Budget states, "Non-Departmental Accounts (NDAs) contain expenditure items essential to the operation of the County government which do not fall within the functional assignment of any department or agency, or which provide for expenditures related to more than one department or agency." The FY19 Budget contained a \$50,000 appropriation for "Inauguration and Transition Appropriation."

⁴ Ms. Kassiri became the Deputy CAO in early 2019.

- On November 7, 2018 and afterwards, Mr. Kleine had a montgomerycountymd.gov email address.
[REDACTED]
[REDACTED]
[REDACTED]
- Montgomery County Administrative Procedure 6-1, Use of County-Provided Internet, Intranet, and E-mail Services states, “electronic mail (email) services are provided to County employees and persons legitimately affiliated with the business of County government for the efficient exchange of information and completion of assigned responsibilities that are consistent with the County’s purposes.”
- Ms. Kassiri had “Overall responsibility” for the County Executive Elect Transition Office, according to a chart dated November 9, 2018.
- The Transition Office’s budget, invoices, and payments were the responsibility of an Administrative Manager of the County Executive’s Office, according to a chart dated November 9, 2018.
- On November 13, 2018, Mr. Kleine received a draft announcement that he was being named the chair of County Executive-Elect Elrich’s Transition Team.
- On November 13, 2018, County Executive-Elect Elrich introduced Mr. Kleine to the Transition Team as the head of the Transition Team.
- The Office of the County Executive was billed for Clear Impact’s services to the Transition Team on the following dates: November 13, 19, and 27.
 - The invoice described the service as “Facilitation and Review for the Transition Team Meeting.”
 - Mr. Kleine was copied on emails between Ms. Kassiri and Clear Impact discussing when these meetings would be.
- Mr. Kleine was one of the 21 people listed on the Transition Office Access list dated November 21, 2018. The list indicated that eight of these people were County employees and that Mr. Kleine was a member of the Revenue Authority.

C. Mr. Kleine Was Confirmed as the CAO on December 11, 2018

Mr. Kleine’s confirmation as CAO on December 11, 2018 is the latest date he could be considered to have become a County employee. The CAO is a compensated position in County government. Mr. Kleine’s attorney posits that Mr. Kleine began County employment on this date.

Within Chapter 19A. Ethics of the County Code, §19A-4(m) states,

(m) Public employee means: ...

(2) *any person employed by a County agency, including the director of the agency; [emphasis added]*

County Code §19A-4(a) states,

(a) Agency or County agency means:

(1) any department, principal office, or office of the executive or legislative branch of County government;

County Code §19A-4(f) states, "Employer means any person who pays or agrees to pay compensation for services rendered."

The following facts relate to Mr. Kleine becoming the CAO:

- Under Montgomery County Charter §211. Duties of the Chief Administrative Officer, the CAO "shall, subject to the direction of the County Executive, supervise all departments, offices, and agencies of the Executive Branch."
- [REDACTED]
- On November 13, 2018, County Executive-Elect Elrich introduced Mr. Kleine to the Transition Team as his selection for CAO.
- On November 14, 2018, Mr. Kleine received a draft announcement that he was being named the CAO, and he commented on it.
- County Executive-Elect Elrich wrote a memo to the Council dated November 20, 2018 indicating his intention to appoint Mr. Kleine as CAO, upon his taking office.
- An interview with Mr. Kleine was published in *Bethesda Beat* on November 21, 2018. In it, Mr. Kleine answered a question about his priorities as CAO. He stated that he discussed the possibility of becoming CAO with Marc Elrich "last fall."
- County Executive Elrich submitted memo to the Council on December 3, 2018 his appointment of Mr. Kleine as the CAO.
- Mr. Kleine was confirmed as CAO by the County Council on December 11, 2018.

II. Relationships with County Vendors, Outside Employment

Mr. Kleine had business relationships with two businesses that contracted with Montgomery County: Balancing Act and Clear Impact. The contracts and emails documenting these relationships show that Balancing Act and Clear Impact agreed to pay for services provided by Mr. Kleine.

In addition, Mr. Kleine was and is the President of Andrew Kleine Consulting, LLC which promotes his book, *City on the Line: How Baltimore Transformed Its Budget to Beat a Great Recession and Deliver Outcomes*. This company was also a party to contracts with Balancing Act.

As of October 30, 2019, Balancing Act and Clear Impact were both described as "partners" on Andrew Kleine Consulting's webpage titled "Services." On that date, the webpage provided links to Clear Impact's and Balancing Act's websites.

A local news site, *Bethesda Beat*, reported on September 9, 2019 that "[i]n early August, Balancing Act was listed under 'partners' on the website, but had disappeared from the section later that month" and provided a screen shot with a partial list of "Partners" that

included Balancing Act⁵. In a letter to the Ethics Commission, Mr. Kleine's attorney on October 4, 2019 referred to the "partner" references as "now-deleted." Neither Balancing Act nor Clear Impact were listed on the "Partners" webpage in September 2019⁶.

Mr. Kleine's attorney wrote that the "'partner' references were intended to convey that those entities, which had business relationships with the Company [Andrew Kleine Consulting, LLC] before Mr. Kleine became a County employee, shared the Company's interest in improving government budgeting, performance, and strategic planning."

Mr. Kleine's offer letter for the CAO position, dated December 3, 2018, stated, "Should you wish to engage in outside employment such as occasional teaching, training, or consulting activities, you will have permission to do so consistent with the proper discharge of your official duties and subject to the approval of the County's Ethics Commission."

The Ethics Commission's website states,

County employees who wish to provide services for money other than their County job (outside employment) must obtain approval in advance of engaging in the outside employment from the Montgomery County Ethics Commission.

The Ethics Commission's website notes that people who are not compensated and people who are employees of the Revenue Authority are not required to apply for outside employment approval.⁷ The CAO is not exempt from requirements for outside employment approval.

Although Mr. Kleine, after he became CAO, was actively promoting his book, receiving royalties⁸ on its sales, and had business relationships with Balancing Act and Clear Impact, he did not apply for approval of his outside employment until April 25, 2019, when he applied for approval of his employment with Andrew Kleine Consulting, LLC.

County Code §19A-12 Restrictions on other employment and business ownership states,

(a) *General restrictions.*

(1) A public employee must not engage in any other employment unless the employment is approved by the Commission...

⁵ The OIG does not know whether Clear Impact was listed on the "Partners" page at that time.

⁶ The names of seven other businesses were listed on the Partners page: BIRCHbark Strategic Consulting, ResourceX, Enterprise Community Partners, National Resource Network, Operational Performance Solutions, Quantified Ventures, and Results for America.

⁷ The definition of "County Employee" for the purposes of the outside employment regulation does not include employees of the Revenue Authority or members of County boards, committees, or commissions. COMCOR 19A.12.01.02.3.

⁸ He earned \$3,157 in royalties through December 31, 2018, according to a statement from the publisher. He wrote the Ethics Commission on August 10, 2019, "My royalty is 10%." Mr. Kleine reported royalty income to himself in his annual Ethics filing for 2018.

(b) *Specific restrictions.* Unless the Commission grants a waiver under subsection 19A-8(b), a public employee must not:

(1) be employed by, or own more than one percent of, any business that... (B) negotiates or contracts with the County agency with which the public employee is affiliated; or

(2) hold any employment relationship that could reasonably be expected to impair the impartiality and independence of judgment of the public employee.

County Code § 19A-4(f) states, "Employer means any person who pays or agrees to pay compensation for services rendered."

COMCOR 19A.12.01.02.2 states that Compensation for Services "Includes receipt of any money or thing of value, regardless of form, paid for services rendered, including sharing in benefits from a business to which an employee provides services..."

COMCOR 19A.12.01.04.1 states, "County employees *and uncompensated appointed officials*, while on duty, may not...sell or offer to sell or otherwise market products or services related to their outside employment to other County employees during work hours." [emphasis added]

COMCOR 19A.12.01.04.3 states, "County employees may not be employed by any business that is regulated by or negotiates or contracts with the County agency with which the employee is affiliated."

COMCOR 19A.12.01.04.4 states,

County employees and uncompensated appointed officials may not use any County property whatsoever in the discharge of their outside employment including transport to and from their outside employment. The Commission may permit an employee to use County property if the employee obtains written approval by the agency head or pursuant to a regulation of the agency.

A. Relationship with Vendor: Balancing Act

Beginning June 1, 2018, Andrew Kleine Consulting was party to two contracts with Balancing Act: 1) a "Sales Representative Contract," and 2) a "General Contract for Services." These contracts were not terminated until January 24, 2019. The County purchased Balancing Act's budget simulation tool before that date.

The following facts relate to Mr. Kleine's relationship with Balancing Act:

- The "Sales Representative Contract" entitled Mr. Kleine to commissions on sales of Balancing Act. The contract stated, "the party who will be providing the services shall be referred to as 'Andrew Kleine'."
- The "General Contract for Services" entitled Mr. Kleine to compensation for his consulting services to Balancing Act's clients. It also stated that, "It is in both parties' interest to promote each other's work, to attract clients and improve services. A

certain amount of non-paid promotional or other non-paid work will be provided by Andrew Kleine at no cost.”

- Balancing Act is featured in Mr. Kleine’s book, *City on the Line*.
- Mr. Kleine wrote the Ethics Commission that “Balancing Act hosted a book party for me in Denver prior to my employment with the County.”
- Balancing Act’s invoice for \$9,800 to the County was dated December 20, 2018.
- On December 21, 2018, Montgomery County paid Balancing Act \$9,800.
- An employee in the County’s Office of Management and Budget (OMB) noticed that Mr. Kleine was listed on Balancing Act’s webpage as a consultant in early January 2019.
 - The OIG found a copy of the Balancing Act website from December 28, 2018 in the Internet Archive. On that date, Mr. Kleine was listed on the Balancing Act “Our People” webpage as a Senior Consultant.
- Mr. Kleine emailed Balancing Act on January 11, 2019, “I should formally sever our partnership contract.” This was one month after Mr. Kleine’s appointment as CAO was confirmed on December 11, 2018.
- On January 24, 2019, Mr. Kleine and Balancing Act agreed to terminate their contracts by mutual agreement.
- On February 19, 2019, Montgomery County held a budget forum at which participants could use Balancing Act. A representative from Baltimore County attended, as did Mr. Kleine.
 - On February 20, 2019, Balancing Act emailed Mr. Kleine, “You have already inspired Baltimore County. They became clients yesterday.”
- On May 9, 2019, a Balancing Act marketing email promoted *City on the Line* book signing and sales at a Los Angeles Government Finance Officers Association (GFOA) conference.
- On May 13, 2019, the Director of OMB presented his FY20 budget to the Council’s Government Operations and Fiscal Policy Committee. It included “\$10,000 for the implementation of the online budgeting tool, *A Balancing Act*.”
- On May 20 and 21, 2019, at Balancing Act’s request, Mr. Kleine signed copies of his book at the Balancing Act booth at a GFOA conference in Los Angeles, CA. Balancing Act bought the copies of the book. Mr. Kleine receives royalties on sales of his book.
- On October 4, 2019, Mr. Kleine’s attorney wrote the Ethics Commission that “Mr. Kleine has not received compensation for consulting services (or anything else) from Balancing Act at any time.”
- Balancing Act is described as a “partner” on the Andrew Kleine Consulting website (last accessed Oct. 30, 2019).

B. Relationship with Vendor: Clear Impact

Mr. Kleine had a business relationship with Clear Impact, a consulting firm, beginning in the summer of 2018. Clear Impact facilitated Montgomery County’s Transition Team in

late 2018 and provided the County with budget training in 2019. Clear Impact is featured in Mr. Kleine's book, *City on the Line*⁹.

In the summer of 2018, Mr. Kleine made an agreement with Clear Impact that in exchange for Clear Impact paying Mr. Kleine \$5,000 towards book promotion costs, Mr. Kleine would have Clear Impact's logo printed on the back cover of *City on the Line*, and a link to Clear Impact's website would be prominent on the book's website.

The agreement with Clear Impact could be considered a contract under Maryland law. "The elements of a contract are offer, acceptance, and consideration." *B-Line Medical, LLC v. Interactive Digital Solutions, Inc.*, 209 Md. App. 22, 57 A.3d 1041, 1055 (2012). The Court of Special Appeals of Maryland in *B-Line Medical, LLC* went on to state, "a basic principle is that a 'contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract'." 57 A.3d at 1056 (internal citation omitted).

CTI/DC, Inc. v. Selective Ins. Co. of Am., 392 F.3d 114, 122 (4th Cir. 2004) explains the elements of a contract under Maryland law:

The formation of a contract requires mutual assent (offer and acceptance), an agreement definite in its terms, and sufficient consideration....The Restatement Second of Contracts defines consideration as follows: (1) to constitute consideration, a performance or a return promise must be bargained for. (2) A performance or return promise is bargained for if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise...

The following facts relate to Mr. Kleine's relationship with Clear Impact:

- On May 18, 2018, Mr. Kleine emailed Adam Luecking, the CEO of Clear Impact, a "proposal":
 - Mr. Kleine wrote, "For a \$5,000 sponsorship, Clear Impact's logo will be printed on the back cover of the book and a link to Clear Impact's website will be prominent on the outcomebudgeting.com website that will be launched in conjunction with the book."
 - He continued, "The \$5,000 would be used for the following book-related expenses: "\$2,400 for book tour travel...\$600 for developmental edit...\$2,000 for advertising." Mr. Kleine listed specific travel and promotion plans, including the Government Finance Officers Association.
 - Mr. Kleine wrote, "I would have many opportunities to promote the book through the GFOA network."¹⁰

⁹ When Mr. Kleine worked at the City of Baltimore ("the City"), Clear Impact developed strategic plans and provided training for the City. The City purchased Clear Impact's budget proposal software.

¹⁰ See Sections IV and V for discussions of Mr. Kleine's attendance at GFOA events.

- On June 26, 2018, Mr. Luecking responded to Mr. Kleine's May 18, 2018 email, asking where to send the check, and he emailed on July 16, 2018 that the check had been sent about two weeks prior.
- On July 1, 2018, Clear Impact paid Mr. Kleine \$5,000.
- Clear Impact's logo appears on the back cover of *City on the Line*.
- The *City on the Line* website, Cityontheline.com (last accessed October 31, 2019), lists Clear Impact first on the list of three "Supporters" who are thanked for supporting the book. The website shows a Clear Impact logo which can be clicked to access Clear Impact's website, clearimpact.com.
- On November 13, 19, and 27 of 2018, Clear Impact performed services for the Transition Team. These were invoiced on December 7, 2018. Then-Assistant CAO Kassiri approved payment of the invoice.
- On October 4, 2019, Mr. Kleine's attorney wrote the Ethics Commission that Andrew Kleine Consulting "has never had a formal business relationship with Clear Impact" and that "Mr. Kleine has not consulted with Clear Impact during his County employment."
- The Andrew Kleine Consulting website refers to "our partners at Clear Impact" (last accessed Oct. 30, 2019).

C. Outside Employment: Andrew Kleine Consulting, LLC and *City on the Line*

Mr. Kleine's April 25, 2019 outside employment approval request states that Andrew Kleine Consulting, LLC promotes and sells *City on the Line*, in addition to providing consulting services.

Mr. Kleine wrote the Ethics Commission on August 8, 2019, "I have not done any consulting work while employed by the County."

Mr. Kleine frequently promoted *City on the Line* outside of Montgomery County Government from mid-2018 through 2019.

Multiple County employees reported to the OIG that Mr. Kleine often spoke about his book to County employees and that they felt they needed to read it. OMB referred to *City on the Line* in its budget training sessions, after which County employees from various departments emailed that they needed a copy.

The following facts relate to Mr. Kleine's income from *City on the Line*:

- *City on the Line*'s official publication date was October 15, 2018.
- On December 4, 2018, Mr. Kleine retweeted a tweet that stated, "This new book by @awkleine should be required reading for anyone working in local government" from the Deputy General Manager of Manchester, CT.
- On December 10, 2018, Mr. Kleine retweeted a tweet from the program director of the political science program at UMBC at Shady Grove that stated, "#MoCo agency bosses are reading/having staff read incoming Chief Administrative Officer's @awkleine's book, *City On the Line*. You should too."

Available at Amazon for \$35 <http://a.co/d/hf7xUtV> @UMBCpolisci @Marc_Elrich”

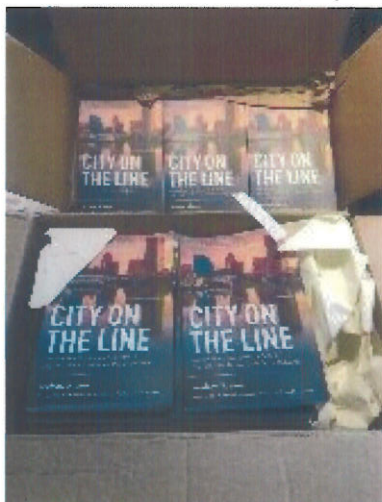
- On December 18, 2018, a County Department Director emailed that *City on the Line* was “assigned to him as mandatory reading.”
 - The CAO supervises County department directors and would be the person who could require certain work assignments from Department Directors.
- On the following dates in 2019, Mr. Kleine made presentations of *City on the Line*: January 3, February 26, March 9, April 3, May 7, May 22, June 4, June 20, July 17.
- On April 25, 2019, Mr. Kleine submitted an outside employment request with the Montgomery County Ethics Commission for employment as the President of Andrew Kleine Consulting, LLC.
 - Mr. Kleine’s application stated the nature of this business was “Consulting public sector organizations...and sale of book, *City on the Line*...”
- On April 29, 2019, the Director of OMB emailed staff, “To help the office plan for outcome budgeting and the Turn the Curve initiative, we have five copies of the books *City on the Line* and *Trying Hard is Not Good Enough*. Please see me or Darlene to borrow one. I also have coupons if you want to purchase your own copy of *City*.”

[REDACTED]

- When *City on the Line* books are sold, Mr. Kleine earns royalties. He earned \$3,157 in royalties through December 31, 2018, according to a statement from the publisher¹¹.

¹¹ The OIG has an annual statement for 2018 and does not have information on royalties earned in 2019.

- A May 16, 2019 tweet from Balancing Act regarding an upcoming book signing by Mr. Kleine at the May 2019 GFOA conference showed a photo of cases of *City on the Line* books that Balancing Act purchased:



- “Balancing Act @BalancingActEP Two cases of “City on the Line” for @awkleine book signing @gfoa #gfoa2019. Join us Monday at 12:15 at booth 728. Andrew—bring an extra Sharpie, ok?”
 - Mr. Klein wrote to the Ethics Commission on August 8, 2019 that “I did not ask Engaged Public to purchase copies of my book to sell and give to clients at its GFOA booth” and that he was not paid for signing the books.
 - Mr. Klein wrote to the Ethics Commission on August 10, 2019 that Balancing Act purchased 20 copies of the book from the publisher, “at a cost of about \$20 per copy.”
- On June 6, 2019, the Ethics Commission approved Mr. Klein’s outside employment request for employment with Andrew Klein Consulting, LLC.
- On August 6, 2019, an OMB employee asked an OMB staff member and a Recreation Department budget specialist to draft a presentation for the Training Implementation Workgroup. “You can use *City on the Line*, Chapter 3...as a reference.”
 - A speaker note on the OMB & Training Implementation Workgroup September 2019 presentation, “Outcome Based Budgeting FY21 Operating Budget” stated that “We can use the example – from *City on the Line* Pg 58/59.”
- On August 14, 2019, an OMB employee emailed other staff, “As a suggestion it may be advantageous to read the following materials to gain a better understanding of Outcome Based Budgeting and Turn the Curve thinking: *City on the Line* and *Trying Hard is Not Good Enough*.”
- On August 19, 2019, a Recreation Department employee emailed, “Could you please order me a copy of ‘City on the Line’...we are discussing it in our work sessions and I am the only person in the group who does not have a copy. Plus we are receiving work assignments related to the information in the book.”
- On August 19, 2019, a Department of Permitting Services employee emailed a request for *City on the Line* via 2-day shipping from Amazon and wrote, “I normally wouldn’t pay this, but we need this book to reference for outcome budgeting, which is a new way of budgeting this year.”
- On August 23, 2019, a Department of Police employee emailed, “In the budget meetings I am going to they keep referring to a book ‘City on the Line.’”
- On October 14, 2019, Mr. Klein’s attorney wrote that the royalties earned from the 20 copies of the book Balancing Act bought for the May GFOA event totaled

approximately \$42, which was below the threshold dollar value at which reporting is required of meals provided by entities that do or seek to do business with the County.

- As discussed in Section V, the County funded some of Mr. Kleine's travel to events where he promoted *City on the Line*.

[REDACTED]

III. Prohibited Participation of Public Employees

The County conducted business with Balancing Act and Clear Impact at the direction of Mr. Kleine, beginning before his official appointment as the CAO and continuing thereafter. At the time Mr. Kleine initiated the County's procurements from these businesses, he was under contract with Balancing Act, and he was meeting the terms of his agreement with Clear Impact for a book sponsorship. He was involved in the details of the County's procurements from both businesses.

County Code §19A-11(a)(2) states the following:

Sec. 19A-11. Participation of public employees.

(a) *Prohibitions.* Unless permitted by a waiver, a public employee must not participate in...

(2) any matter if the public employee knows or reasonably should know that any party to the matter is:

(A) any business in which the public employee has an economic interest or is an officer, director, trustee, partner, or employee...

(E) any business or individual that is a party to an existing contract with the public employee or a relative, if the contract could reasonably result in a conflict between private interests and official duties;

County employees have a duty to follow County procurement law, which requires procurement to be competitive,¹² but a public employee with a conflict of interest could want a particular business to profit from the procurement. A County employee who is a party to a contract with a vendor might award a procurement to that vendor without adequate competition and might provide terms that might not be in the County's best interest.


¹² Awards of \$10,000 or less are within the discretion of the Using Department Head; competition should be preserved with this method to the extent practical. Awards above \$10,000 and below \$100,000 are to be based on price, responsiveness, and responsibility. Purchases of \$100,000 and up have more requirements related to competitive procurements.

A. Participation – Balancing Act matter

Mr. Kleine initiated and was involved in the County's purchase of a one-year subscription to Balancing Act software for approximately \$10,000.

The following facts relate to Mr. Kleine's participating in matters to which Balancing Act is a party:

- On November 14, 2018, Mr. Kleine emailed Balancing Act, "Let me know my options for using Balancing Act for a Montgomery County simulator and receipt."
- On November 26, 2018 Mr. Kleine emailed Richard Madaleno, future OMB Director, "Check out this website: www.abalancingact.com"
- On November 28, 2018, Mr. Kleine emailed Balancing Act and Richard Madaleno, "Rich is going to be Montgomery County's OMB Director...I want to connect the two of you so that Rich can learn more about Balancing Act and we can get started soon on customizing it for our needs."
- On November 29, 2018, Mr. Kleine emailed Mr. Madaleno and Balancing Act, "I would like to pose specific tradeoffs" and "Please also discuss how we can use meeting mode."
- On December 1, 2018, Mr. Madaleno emailed Mr. Kleine regarding Balancing Act, "Do you want me to formalize the agreement?" Mr. Kleine responded, "Yes, go ahead and finalize the agreement."
- On December 3, 2018, Mr. Madaleno emailed OMB staff that "CE Elrich and Andrew Kleine want to bring more citizen engagement and transparency to the budget process. Andrew has interacted with a firm called A Balancing Act to help develop a public interface and has recommended we use them to build a tool for us."

- 
- On December 3, 2018, the Director of OMB emailed a staff member about watching a Balancing Act demo and stated that "Andrew wants it up as soon as possible." An OMB staff member emailed the Director about the demo that he thinks Balancing Act "put together for Andrew."
 - On December 12, 2018, a Balancing Act representative emailed OMB that Mr. Kleine "had asked me if I could help expedite the creation of a Montgomery County simulation."
 - On December 19, 2018, an OMB manager wrote regarding buying Balancing Act, "Since this is a directive from 2nd floor lets go with it." (The 2nd floor of the Executive Office Building is the location of the CAO and County Executive offices).
 - On December 21, 2018, Montgomery County paid Balancing Act \$9,800.
 - On January 5, 2019, Balancing Act emailed OMB that Taxpayer Receipt was being added at Mr. Kleine's request.

- From January 5, 2019 to January 11, 2019, Mr. Kleine communicated requirements and comments on the implementation of Balancing Act to OMB and directly to Balancing Act.
- Mr. Kleine emailed the Director of OMB on January 12, 2019, "Did you see my text that Chris Adams [of Balancing Act] agreed to include taxpayer receipt in our package?"

B. Participation – Clear Impact matter

Mr. Kleine was involved in two purchases by the County of Clear Impact's services: 1) the facilitation of the Transition Team meetings for \$10,000, and 2) training and consulting services for up to \$99,999.99. Since then, he was contacted by Clear Impact about the County possibly purchasing its Scorecard software.

The following facts relate to Mr. Kleine's participating in matters to which Clear Impact is a party:

i. Facilitating Transition Team

- On September 12, 2018, Adam Luecking, the CEO of Clear Impact, emailed the - Assistant CAO Kassiri that Mr. Kleine asked him "to reach out to you to get the ball rolling on a potential contract."
- According to Mr. Kleine's response to written questions from the OIG, he "recommended to the Leggett Administration that it engage Clear Impact to facilitate the Transition Team meetings" before the General Election.
 - Mr. Kleine noted that the Leggett Administration had previously contracted with Clear Impact. [REDACTED]

- On October 8, 2018, Mr. Kleine emailed Ms. Kassiri, "Clear Impact has agreed to facilitate the transition team for \$10,000."

ii. Training and Consulting Services

- On March 19, 2019, Clear Impact submitted its proposal for training and consulting services to the Administrative Manager.

- [REDACTED]
- On April 8, 2019, the CEO of Clear Impact emailed Mr. Kleine stating it “was great to catch [up] over lunch” and summarizing ideas for “Turn the Curve” training and other topics they discussed. He also wrote, “We will do whatever it takes to meet your needs.”
 - On June 7, 2019, the County executed a contract with Clear Impact for Results Based Accountability training, coaching, and consulting services. The contract stated that “total compensation for all services provided under this contract shall not exceed \$99,999.99.” The County was to identify what it chose to purchase on an as-needed basis.
 - On July 11, 2019, the Deputy CAO emailed that “Andrew wants me to bring [a Clear Impact employee]...in one more time...to give the same presentation he gave yesterday.”
 - Also on July 11, 2019, the Deputy CAO emailed a Department Director who had requested additional training for his staff that “Andrew and I agree with you.”
 - On July 19, 2019, Clear Impact emailed Mr. Kleine the price for RBA professional certification.

iii. Scorecard

- Scorecard is web-based software sold by Clear Impact for measuring and reporting performance.
- On May 10, 2019, Mr. Kleine emailed Clear Impact asking for a demonstration of Scorecard, and a CountyStat manager emailed Clear Impact that Mr. Kleine asked him to coordinate setting up a Clear Impact demonstration.
- On August 26, 2019, Clear Impact emailed Mr. Kleine the price for Scorecard.

IV. Misuse of Prestige of Office/ Endorsements

Mr. Kleine was prominently or solely identified as the Chief Administrative Officer of Montgomery County in connection with at least three events involving speaking about or signing copies of *City on the Line*.

County Code §19A-14(a) and (b) state the following:

§19A-14. Misuse of prestige of office; harassment; improper influence.

(a) Unless expressly authorized by regulation or as may be permitted under Section 19A-16, a public employee must not intentionally use the prestige of office for private gain or the gain of another...

(b) Unless expressly authorized by the Chief Administrative Officer¹⁴, a person must not use an official County or agency title or insignia in connection with any private enterprise.

COMCOR 19A.14.01.02.2 Endorsements, Letters of Recommendation states,

A public employee must not use or permit the use of any authority associated with public office in a manner that could reasonably be construed to imply that the employee's agency or the County sanctions or endorses the employee's personal activities or those of another...An employee must not use or permit the use of his or her Government position or title or any authority associated with his or her public office to endorse any product, service or enterprise...

COMCOR 19A.14.01.02.3 Teaching, Speaking and Writing states,

When teaching, speaking, or writing in a personal capacity, the employee may refer to the employee's official title or position as one of several biographical details when such information is given to identify the employee provided that his title or position is given no more prominence than other significant biographical details.

The following facts relate to Mr. Kleine's use of his County title and implications of County endorsement:

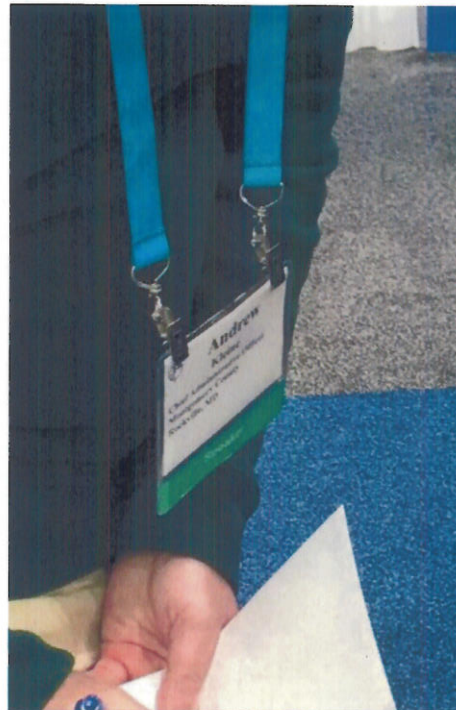
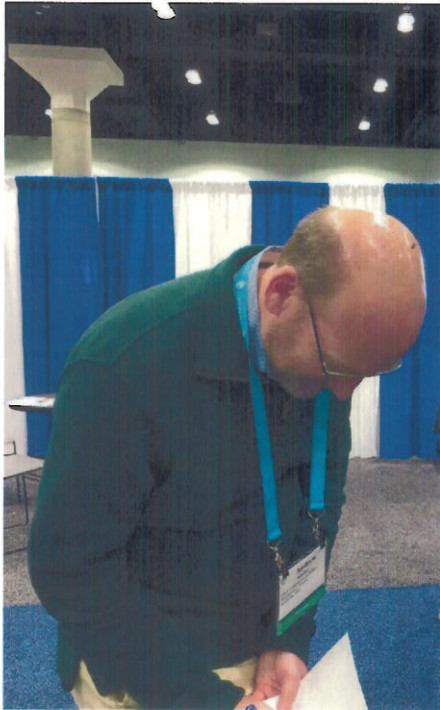
- Mr. Kleine discussed *City on the Line* at a Maryland Association of Counties (MACo) conference on January 3, 2019. The January 3 conference program listing was "MACo Book Club and Author Interview: '*City on the Line*...', Speaker: Andrew Kleine, Chief Administrative Officer, Montgomery County."
- One of the slides for Mr. Kleine's Envisio webinar on May 7, 2019, states only, "Andrew Kleine, Chief Administrative Officer, Montgomery County, MD." The slides also include the cover of *City on the Line*, and a short biography that mentions the City of Baltimore but not Montgomery County.
- Mr. Kleine was only identified as "Chief Administrative Officer for Montgomery County, MD" in a May 9, 2019 Balancing Act marketing email promoting *City on the Line* book signing and sales at the May 19-22 Los Angeles Government Finance Officers Association (GFOA) conference.

¹⁴ Since Mr. Kleine is the CAO, he could be seen as having expressly authorized the use of his title in connection with the promotion of his book. The OIG is aware of no such authorization.

- Mr. Kleine was similarly only identified as “Chief Administrative Officer, Montgomery County, Rockville, MD” as a speaker in the GFOA Program Guide for the conference.
- After the conference, Mr. Kleine tweeted, “I spoke to more than 500 people about Outcome Budgeting and #cityontheline.”
- On May 21, 2019 Mr. Kleine retweeted a Balancing Act tweet of a photo of three County Department of Finance employees holding *City on the Line* books at the GFOA conference. Balancing Act tweeted,
 - “Hey @awkleine! We just had a run in all your signed books. Recognize these guys? Will you sign more? #GFOA2019”
 - Mr. Kleine tweeted, “I’ve seen those people somewhere before :) @MontgomeryCoMD”
 - @MontgomeryCoMD is the official twitter account of the Montgomery County Government.
 - Mr. Kleine’s attorney wrote the Ethics Commission on October 4, 2019 that “Mr. Kleine never encouraged the photographed County employees – nor any County employee, at any time – to purchase his book.”



- As shown in a tweet from Mr. Kleine, he wore his conference participant name tag, which states he is the Chief Administrative Officer for Montgomery County, while signing books at the Balancing Act booth at the May Los Angeles GFOA conference.
 - Mr. Kleine tweeted, "I love signing my book for people. You can buy a signed copy of my book at the @BalancingActEP booth (728). #GFOA2019"



- The Maryland Government Finance Officers Association (MDGFOA) conference program for June 20, 2019 lists an author interview regarding *City on the Line*. The full description of Mr. Kleine as the "Presenter" states, "Andrew Kleine, CAO, Montgomery County."
 - Separately on the same page, there are photographs of the book cover and Mr. Kleine, who is only identified as "Chief Administrative Officer, Montgomery County, MD."
 - A May 30 email from a County Department of Finance employee states that the first announcement of this event from MDGFOA listed Mr. Kleine as former budget director for Baltimore, but the Finance employee told MDGFOA to list Mr. Kleine as the CAO for Montgomery County. The OIG does not have evidence of whether Mr. Kleine was aware of this change.
 - The program states, "Books Available at the Conference" and "Book Signing will take place after Mr. Kleine's Session."

V. County Property and County Time for Personal Use

Mr. Kleine has advocated for his personal interest – his book – during his work time. As addressed in Section II, Mr. Kleine commonly referred to his book in discussions with County employees, and he encouraged them to read it.

Mr. Kleine tweeted about discussing or signing *City on the Line* on 10 weekdays from January through July of 2019. Two of these occasions involved videoconferences, and the other eight appear to have been in person. Some were in the Washington, DC area, and some involved non-local travel, for which the County paid.

County Code §19A-14(c) states, “A public employee must not use any County agency facility, property, or work time for personal use or for the use of another person.”

Regarding subordinates, COMCOR 19A.14.01.02.1 Use of a Subordinate’s Time states, “A public employee must not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.”

A. County Property for Personal Use

The following facts relate to the expenditure of County money for books and travel in connection with *City on the Line*.

- The County purchased 89 copies of *City on the Line* from October 1, 2018 through September 30, 2019, for a total of approximately \$3,000:
 - Most orders the OIG has documentation for were at a cost of \$35 per book, but some were lower.
 - At a cost of \$35 per book, 89 books would cost \$3,115.
 - At a cost of \$30 per book, 89 books would cost \$2,670.
- Mr. Kleine used County funding to cover the cost of his travel to the January 2-4, 2019 Maryland Association of Counties conference in Cambridge, MD.
 - The County paid \$611 for Mr. Kleine to attend the conference:
 - \$315 for the conference fee
 - \$296 for hotel charges
- Mr. Kleine used County funding to cover the cost of his travel to the May 19-22 GFOA 2019 conference in Los Angeles. Mr. Kleine spoke about *City on the Line* and signed copies of it at the conference.

[REDACTED]

- The County paid \$2,298 in travel charges for Mr. Kleine to attend the event:
 - \$420 for the GFOA conference fee
 - \$1,118 for hotel charges
 - \$750 for airfare

B. Mr. Kleine's County Work Time for Personal Use

As discussed in Section II, Mr. Kleine often referred to his book in discussions with County employees.

On the following weekdays in 2019, Mr. Kleine spoke about or signed *City on the Line* outside the County Government:

| Date | Time | Event | County Work Time Reported |
|---------------------------|-----------|---|---------------------------|
| Jan. 3, 2019 (Thurs.) | 12:45 pm | Spoke about book, MD Assoc. of Counties conference, Cambridge, MD | 8 hours |
| Feb. 26, 2019 (Tues.) | | Spoke about book, University of MD Baltimore County | 8 hours |
| April 3, 2019 (Wed.) | | Spoke about book, DC City Administrator's Office, Washington, DC | 8 hours |
| May 7, 2019 (Tues.) | 2:00 pm | Spoke about book, Envisio Inc. webinar | 8 hours |
| May 20, 2019 (Mon.) | 12:15 pm | Signed books and spoke about book, Government Finance Officers Association (GFOA), Los Angeles CA | 8 hours |
| May 21, 2019 (Tues.) | | | 8 hours |
| May 22, 2019 (Wed.) | 8:30 a.m. | | 8 hours |
| June 4, 2019 (Tues.) | | Spoke about book via video with New Local Gov't Network, London | 8 hours |
| June 20, 2019 (Thurs.) | 9:10 a.m. | Spoke about book, MD GFOA conference, Ocean City, MD | 8 hours |
| July 17, 2019 (Wed.) | | Spoke about book via video with University of Montana | 8 hours |

- Mr. Kleine indicated on his time reports covering the weekdays during which he made presentations about and/or signed *City on the Line* that he put in 8 hours of County work time each of those days.
 - When a full-time employee reports working 8 hours on a given day, the County considers that employee as having worked a full day.
- In response to the OIG's questions about expenses, Mr. Kleine wrote that
 - He discussed his book at the January MACo conference on his personal time.
 - At the May 2019 GFOA conference, he "spent about three hours of my own, personal time over the course of four days on activities related to promoting my book: an hour speaking on a panel about alternative budgeting methods,

an hour appearing at a GFOA 'reading room' where my book was available free to conference attendees, and an hour signing copies of my book at the Balancing Act booth."

- A tweet on April 3, 2019 at 11:35 a.m. from Mr. Kleine included a photo of Mr. Kleine holding up a copy of *City on the Line* for the camera:
 - "Andrew Kleine @awkleine Apr 3 Talkin' Outcome Budgeting with staff from the DC City Administrator's Office. Great discussion. Thanks to @my old friend Victoria Wassmer for the invite. #cityontheline"



C. County Employee Work Time for Personal Use

As discussed in Section II, multiple County employees reported to the OIG that Mr. Kleine often spoke about *City on the Line* to employees and that they felt they needed to read it. No one the OIG interviewed told the OIG that Mr. Kleine directly told any County employees that they were required to read it.

OMB referred to *City on the Line* in its budget training sessions, after which County employees from various departments emailed that they needed a copy.

Furthermore, as discussed in Section IV, Mr. Kleine retweeted a photo of three County Department of Finance employees holding *City on the Line* books at the Los Angeles GFOA conference.

The following additional facts also relate to County employee time being used in connection with *City on the Line*.

- On June 6, 2019, an OMB employee emailed a telework plan that included reading *City on the Line*.
- On July 1, 2019, the Director of OMB emailed his staff a compilation of takeaways from *City on the Line*. [REDACTED]

VI. Improper Influence and the Appearance of Improper Influence

The OIG has learned of reports from County employees that Mr. Kleine's activities caused them to question whether his activities were proper.

County Code §§19A-2 states the following:

Sec. 19A-2. Legislative findings and statement of policy.

(a) Our system of representative government depends in part on the people maintaining the highest trust in their officials and employees. The people have a right to public officials and employees who are impartial and use independent judgment.

(b) The confidence and trust of the people erodes when the conduct of County business is subject to improper influence or even the appearance of improper influence.

A. Improper Influence

The facts listed in the other sections of this memorandum relate to whether Mr. Kleine was impartial and whether he was subject to improper influence in the conduct of County business.

B. Appearance of Improper Influence

Multiple County employees told the OIG of ethical concerns regarding Mr. Kleine's activities, and the OIG learned of other employees reporting their concerns.

The following facts relate to whether there was an appearance of improper influence in Mr. Kleine's conduct of County business:

[REDACTED]

[REDACTED]

- County employees from two different County departments notified the Ethics Commission in July and August of 2019 of concerns regarding Mr. Kleine and Balancing Act.
- The County Council and the OIG received reports related to possible conflicts of interest on the part of Mr. Kleine related to Balancing Act, Clear Impact, and *City on the Line*.

VII. Other Provisions of County Law Applicable to Contractors That Can Be Addressed by the Ethics Commission

If Mr. Kleine's relationships with Balancing Act and Clear Impact are considered employment or offers of employment, the County procurement law's prohibition on contractors employing or offering to employ public employees may have been violated.

County Code §11B-52 states the following:

§ 11B-52. Ethics; Contractor conduct.

(a) Unless authorized by law or the Ethics Commission under Chapter 19A, a person while engaged in a procurement matter with the County must not employ or offer to employ a public employee if the duties of the public employee include significant participation in the procurement matter. Public employee, employ, and significant participation, as used in this section, are defined in Chapter 19A.

County Code §19A-4(f) states, "Employer means any person who pays or agrees to pay compensation for services rendered."

County Code §19A-4(g) states, "Employment or employ means engaging in an activity for compensation."

County Code §19A-13(c) states, "Significant participation means making a decision, approval, disapproval, recommendation, rendering of advice, investigation, or similar action taken as an officer or employee. Significant participation ordinarily does not include program or legislative oversight, or budget preparation, review, or adoption."

The CAO "shall, subject to the direction of the County Executive, supervise all departments, offices, and agencies of the Executive Branch," according to the Montgomery County Charter §211.

A. Balancing Act and the employment of a public employee

- Balancing Act's relationship with Mr. Kleine is addressed in Section II.

- The County's procurement from Balancing Act and Mr. Kleine's participation are addressed in Section III.

B. Clear Impact and the employment of a public employee

- Clear Impact's relationship with Mr. Kleine is addressed in Section II.
- The County's procurements from Clear Impact and Mr. Kleine's participation are addressed in Section III.