



MONTGOMERY COUNTY ETHICS COMMISSION

Advisory Opinion 22-12-021

December 30, 2022

An employee of the Department of Technology and Enterprise Business Solutions (TEBS) is the Integrated Justice Information Services (IJIS) Program Director, Grade 40, and has held this position for 15 years. On November 9, 2021, this employee was elected as a Councilmember for the City of Gaithersburg, MD and was sworn in on November 15, 2021. While the County's ethics law provides "public employee[s] must not engage in any other employment unless the employment is approved by the Commission," the employee did not seek outside employment approval from the Ethics Commission until after she had filed her financial disclosure report for 2021. In the report, she had identified outside earned income from the City of Gaithersburg and was notified by the staff of the Ethics Commission that she was required to have outside employment approval with respect to her compensated outside position. She then requested outside employment through the Commission's online system with the employee's agency head recommending to the Ethics Commission that it approve the outside employment request.

Insofar as the employee's role with the County impacts the City of Gaithersburg (as well as other incorporated municipalities in Montgomery County), the employee has sought an advisory opinion from the Ethics Commission to determine whether the ethics law results in any conflicts or requires the imposition of any limitations on the execution of the employee's County position or her position with Gaithersburg.

In her work for the County, the employee along with her co-workers, develops technological solutions for the County that are occasionally of utility to local municipalities, including the City of Gaithersburg. At the height of the pandemic, the employee was assigned as the TEBS COVID-19 Lead for all COVID-19 related activities. The work on the project was performed by County employees, contractors, and Microsoft, the solution vendor. A single solution was developed and released for use in October 2020.

The COVID-19 testing solution is a single solution used by County residents, employees, County partners, and County municipalities, including the City of Gaithersburg. But no portion or function of the solution was customized specifically for the City of Gaithersburg which utilizes the system in the same way as other municipalities, County departments, and partners. As the IJIS Program Director, the employee creates solutions for the criminal justice agencies of

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Montgomery County, and some of those solutions, such as the Correction and Rehabilitation Information Management Solution (CRIMS) are used by County municipalities, including the Gaithersburg Police Department. Like the COVID-19 solution, these are single solutions developed to be used by many, and no work has been customized separately for the City of Gaithersburg.

The County's ethics law is founded on the right of the public to County employees who will execute their County positions impartially and with independent judgment. With respect to outside employment activities, the law specifically bars employees from holding any employment relationship that could reasonably be expected to impair the impartiality and independence of judgment of the public employee. (19A-12(b)(2)).

While in both her County position and in her outside employment with the City of Gaithersburg the employee would be serving the public, the interests of the respective jurisdictions are different. To address the potential for conflicts of these interests and impairment of the employee's impartiality, the Commission advises the employee in performing services to the County to recuse herself from working on any specific matter or issue concerning the City of Gaithersburg. While the Commission believes that there is no prohibition on working on projects that multiple jurisdictions, including the City of Gaithersburg, might utilize, the employee should not be involved in any direct communications with the City of Gaithersburg and its personnel. Further, the employee should not be involved in addressing any specific concern identified by the City of Gaithersburg. And, the employee should not use any non-public data or information compiled or collected by the County in her role with the City of Gaithersburg. The Commission also advises that the County employee should not attend meetings in which the City of Gaithersburg is present. Further, when acting as a City of Gaithersburg Councilmember, the employee should not attend meetings with TEBS staff.

The position of a minority of the Commission is that it is not possible for the employee to effectively perform both positions with impartially and with independent judgement.

In providing this opinion, the Commission has relied on the information provided by the requestor.

For the Commission:



Susan Beard, Chair