



BEFORE THE MONTGOMERY COUNTY ETHICS COMMISSION

Nina Weisbroth
Chair

Stuart D. Rick
Vice Chair

March 13, 2012

Advisory Opinion No. 12-02-002

The Public Ethics Law § 19A-13(a) provides that a former public employee may not work on certain matters for 10 years after the last date the employee “significantly participated” in the matter as a public employee. Moreover, pursuant to § 19A-13(b), a former public employee must not, for one year after leaving County service, enter into an employment arrangement with a person or business if the employee “significantly participated” in regulating the person or business or in contractual activity with that person or business.

The inquiring employee works in an administrative capacity supporting a major County information technology system. The IT system is a software program used under contract with a particular company. The employee asks whether the post-employment provisions restrict the employee’s ability to take a job with the particular company or impose limitations on the scope of the employee’s work for the company as regards its contract with the County. The Ethics Commission concludes the employee’s work on the IT system did not constitute “significant participation” and, therefore, the post-employment provisions do not limit the employee’s working for the company or limit what matters the employee will work on when working for the company.

“Significant participation” is defined by § 19A-13(c) as 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 employee is one of four county employees working on issues associated with the IT system. He is at the lowest rung of the team. His main job is to troubleshoot system issues. If, for example, an individual has a need to execute a particular kind of entry into the system, the employee would help the individual to execute the entry. If an individual has trouble accessing the system, the employee would try to resolve the problem. Occasionally, the employee would have contact with employees of the company at a similarly low level.

The employee does not manage the contract with the company; he does not approve or pay invoices; he does not recommend change orders or contract amendments; he played no role in

Montgomery County Ethics Commission

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the selection of the company as a contractor; and, he is not involved in the evaluation of the company's performance under its contract.

Under these circumstances, the Ethics Commission concludes that the employee's duties do not rise to the level of "significant participation" in the County's contractual activities with the company because the employee's role does not involve making a decision, approval, disapproval, recommendation, rendering of advice, investigation, or similar action with respect to that contract.

Under section 19A-9(a) of the Ethics Code, the Commission may investigate any matter that the Commission believes may constitute a violation of the Ethics Code if the Commission finds that an investigation is necessary. It appears that the employee may have violated section 19A-11(a)(2)(C) of the Ethics Code, which prohibits an employee from participating in a matter in which a party to the matter is an entity with which the employee is negotiating or has an agreement for employment. However, the Commission has decided not to investigate in this instance, as the benefit to be obtained from an investigation and subsequent resolution of the issue would be far outweighed by the cost associated with such activity. The decision not to investigate is based on the particular circumstances present here, and, in particular, the minimal role the employee played in the administration of the contract affecting the entity involved.

For the Commission:



Nina A. Weisbroth, Chair