



MONTGOMERY COUNTY ETHICS COMMISSION

Steven Rosen
Chair

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September 8, 2016

Advisory Opinion 16-08-022

On August 29, 2016, the Ethics Commission received from you a request for an advisory opinion and on August 30, 2016, a request for a waiver. The request for the waiver acknowledged that it was submitted without a statement from the agency head (or designee), a requirement for submission pursuant to 19A-8(f) of the County Code.

Until September 1, 2016, you were an employee of the Department of Health and Human Service working in the Child Welfare Services program. On that date you retired after 31 years of service from your position as a Child Welfare supervisor. Prior to your retirement, you applied for and were selected to be the Program Coordinator at an entity (“the Entity”) that has a contract to provide services to Child Welfare Services.

You have inquired whether your proposed employment arrangement is consistent with the post-employment requirements of County law, found in 19A-13. After consideration of your request for an advisory opinion, and the exchange of emails between you and Counsel to the Ethics Commission, it is the conclusion of the Ethics Commission that 19A-13(b) bars you from working for the Entity for one year from the end of your County service, and that 19A-13(a) constitutes a permanent bar to your providing services to the Entity in connection with the existing contract it has to provide services to Child Welfare Services.

Background

As a Child Welfare Services supervisor, your role of supervising the Transition Youth Services Unit included supervising social workers that manage caseloads of older teens preparing to exit the foster care system. The Entity’s contract with DHHS includes providing services to youth transitioning out of the foster care system. It does so through a program run by the contractor referred to as the Live, Learn, and Lead Academy (3L). Some of the teens in caseloads handled by the social workers you supervise are enrolled in the 3L program administered by the Entity pursuant to its contract with DHHS. As supervisor, among other things, you reviewed monthly

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progress reports of the social workers reporting to you on their caseloads, including the status of the youth participating in the 3L program. You would ensure that the needs of the youths in caseloads over which you provided supervision were being met.

You were not involved in the meetings involving the case managers under your supervision when they met with the youths involved and the “coaches” from the 3L program. You did meet monthly with the then coordinator of the 3L program. These monthly meetings addressed program coverage, proposed activities, workshops and similar matters. You also received status updates with regard to youths’ progress in the 3L program. If there were issues identified involving staff under your supervision, you would ensure that the issues were addressed. A key part of your role was to ensure clear communication between staff under your supervision and the Entity’s 3L program staff. You were not the contract monitor of the contract with the Entity. However, at the end of each month, you were asked to verify to the contract monitor the services provided to the youths by the Entity during the month.

You have indicated that the new position at the Entity to which you applied for and were selected, the 3L Program Coordinator, would be responsible for supervising two 3L coaches and monitoring their provision of services to youth participants in 3L. In so doing, you would unavoidably be involved in matters falling under the contract with DHHS.

Legal Standard

The prohibition is in 19A-13 of the County Code state:

- (a) A former public employee must not work on or otherwise assist any party, other than a County agency, in a case, contract, or other specific matter if 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 if the public employee significantly participated during the previous 3 years:
 - (1) in regulating the person or business; or
 - (2) in any procurement or other contractual activity concerning a contract with the person or business (except a non-discretionary contract with a regulated public utility).

Both of the substantive prohibitions of 19A-13 are triggered by an employee’s “significant participation” in “a case, contract, other specific matter” (19A-13(a)) or “in regulating the person or business; . . . or in any procurement or other contractual activity concerning a contract with the person or business . . .” (19A-13(b)). Here, the fundamental question is whether your participation in the contract with the Entity for 3L services was significant.

Section 19A-13(c) defines significant participation:

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.

Based on the facts that you have provided, the Commission concludes that your participation was significant. While you were not the contract administrator, and though you were not a case manager involved in day to day the handling by the contractor of its responsibilities for assisting individual youths pursuant to the 3L contract, you were the supervisor of those who were directly responsible for the welfare of the needs of the youths addressed under the contract. In this role, you received monthly reports and ensured the needs of the youths were being addressed; you met monthly with the Entity's 3L Program Coordinator to ensure a range of issues were properly addressed; and you reported monthly on the Entity's performance under the contract to the contract administrator. Any one of these activities may constitute significant participation in the contractual activity; collectively, they clearly reflect your significant participation in the 3L program contract activity and the contract's proper execution.

As a consequence of the finding of significant participation:

- (a) the one year bar of 19A-13(b) applies, meaning that you are prohibited from working for the Entity for one year after leaving County service; and
- (b) 19A-13(a) permanently prohibits you from assisting others (in particular, the Entity) on the existing 3L program contract between the Entity and the County.

As regards your request for a waiver, and aside from its not having been accompanied by the required statement from the Department head, the Commission will presume that you desire a waiver from both of the applicable prohibitions, 19A-13(a) and 19A-13(b). As a consequence of recent changes to the County's ethics law, the Commission does not have authority to issue a waiver pursuant to the waiver provision under 19A-8(c) for the permanent bar of 19A-13(a). Therefore, as long as the job you would perform at the Entity specifically involves working on matters relating to the existing 3L contract that you participated in as a County employee, you will not be eligible to receive a waiver from the Commission under 19A-8(c). If the employment with the Entity were designed to keep you away from any work relating to the 3L contract with the County, the bar of 19A-13(a) would not be at issue. If this were true, you could seek a waiver of the one year bar of 19A-13(b) pursuant to 19A-8(c) of the ethics law.

The Commission notes that contractors engaged in a procurement matter are by County law prohibited from employing or offering to employ employees whose duties involve significant participation in the procurement matter. (Code 11B-52.) Furthermore, pursuant to section 19A-11(a)(2)(C) of the County code, County employees are prohibited from working on matters affecting any businesses with which they are applying, negotiating, or have an agreement for employment.

You should be aware that these laws and the prohibitions in 19A-13 are intended to prevent contractors from gaining special advantage in their dealings with County government and to assure that County employees are impartial in the execution of their County jobs and do not use County office for private gain of themselves or County contractors.

For the Commission:



Steven Rosen, Chair