



## MONTGOMERY COUNTY ETHICS COMMISSION

Susan Beard  
*Chair*

Bruce Romer  
*Vice Chair*

**August 4, 2021**

**AO21-08-011**

An Assistant Fire Chief with Montgomery County Fire and Rescue Service (MCFRS) sought outside employment to work with a company that provides services to MCFRS through contracts with the Montgomery County Office of Human Resources. These contracts involve establishing testing for entry level Firefighter positions and for developing and administering protocols associated with promotional examinations for uniform ranks of public safety agencies including MCFRS. In the outside employment provision, the employee would conduct research and development focused on promotional examination content in jurisdictions other than Montgomery County.

The Montgomery County Public Ethics Law Section 19A-12(b)(1)(B) provides that, unless waived by the Ethics Commission, a County employee is prohibited from working for an entity that “negotiates or contracts with the County agency with which the public employee is affiliated.” Here MCFRS was a beneficiary of the contracts, and MCFRS funds were used to pay fees associated with the services procured. The services provided by the contractor required the knowledge and involvement of MCFRS employees to participate in contract execution and implementation, thereby affecting the services to be provided by the contractor. The Commission considers the substance of the transaction here to determine the scope of the prohibition of 19A-12 and determines that 19A-12(b)(1)(B) applies to the outside employment request of the Assistant Fire Chief.

Section 19A-8(b)(3) states that the Ethics Commission may grant a waiver of this prohibition if the Commission concludes that the outside employment will not be likely to create an actual conflict of interest. The employee seeking outside employment with the contractor sought a waiver of 19A-12(b)(1)(B) on the basis that the outside employment would not present an actual conflict of interest. The Fire Chief concurred in the request and recommended that the Ethics Commission waive the statutory prohibition.

At MCFRS, the employee oversees all aspects of training for MCFRS. Additionally, the employee provides support in other areas of MCFRS activities. This support role has been described as similar to that of a consultant: the employee does not directly perform the work but assists those that are currently assigned to those positions by providing experiential advice and support when others are overloaded.

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**100 MARYLAND AVENUE, ROOM 204, ROCKVILLE, MARYLAND 20850**  
**OFFICE: 240.777.6670 FAX: 240.777.6672**

The employee was not assigned to monitoring the contract with the potential outside employer. But the employee had been a subject matter expert that worked with the contractor in its performance of contract matters for MCFRS. In fact, the secondary employment offer was made based on the vendor's observation of the employee's expertise. In the request for a waiver, the employee committed to not working on County matters involving the contractor. Because the employee would not be working on official matters affecting the contractor, the employee believes that there would not be a conflict of interest. As discussed below, the Ethics Commission declines to issue a waiver and instead issues this advisory opinion.

The Public Ethics Law is intended to ensure that public employees are impartial and use independent judgment. The legislative statement in 19A-2(b) of the law provides that "[t]he 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." Here, a County contractor identified a County employee acting as a subject matter expert on the implementation of the contract as a person it wanted to hire in outside employment. A procurement integrity provision of County law at Chapter 11B-52(a) prohibits a person while engaged in a procurement matter with the County from employing or offering to employ a public employee if the duties of the public employee include significant participation in the procurement matter. Whether the offer of employment violates the procurement integrity provision would require a determination by the Commission that the employee's participation in the procurement matter is significant. While the Commission has not made that determination, it notes that the employee's participation was significant enough for the prospective employer to observe the employee's expertise and seek to employ the employee based on what it observed in the execution of its County contract.

The contracts between the vendor/potential outside employer and the County refer to the procurement integrity provision and articulate the prohibition on contractors in a fashion that is actually broader than the 11B-52(a) prohibition itself: the contracts prohibit "a person engaged in a procurement from employing or offering to employ a public employee." The provision at the very least reflects that the contractor was on notice that there are issues with offering employment to people working on their contracts with the County.

In conclusion, the Commission is not comfortable in the issuance of a waiver to an employee that was recruited for an outside employment position in the context of that employee providing official services in connection with the outside employer's execution of a County contract. The circumstance defies the intent of the procurement integrity provisions of County law and the intent of the ethics law more generally.

For the Commission:



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Susan Beard, Chair