

PROPOSAL TO CURE- RICHARD HETHERINGTON

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 . . ." (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 the post-employment provisions codified at 19A-13, which states:

Sec. 19A-13. Employment of former public employees.

(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).

(c) 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 ethics law provides that if, based on a complaint and a report of investigation, the Commission finds reasonable cause to believe that a violation of the ethics law has occurred, the Commission must hold an adjudicatory hearing. The Commission may also dispose of a matter by consent order instead of holding an adjudicatory hearing.

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.

Relevant Facts

On September 9, 2021, the Montgomery County Ethics Commission asked the Montgomery County Inspector General to conduct an investigation into allegations that Richard Hetherington violated Montgomery County ethics law. The Inspector General completed its investigation of the matter and provided a copy of a report dated November 18, 2021, to the Chair of the Ethics Commission.

The OIG reports the following:

The Ethics Commission received anonymous complaints alleging that soon after leaving county employment, former MCP [Montgomery County Police] employee ... Richard Hetherington ... obtained employment with BusPatrol America LLC (BusPatrol), an entity with whom [he] allegedly had significant involvement while working for the MCP. Following a preliminary review, the Ethics Commission determined a predicate existed to support an investigation and requested assistance from the OIG.

Richard Hetherington was hired on April 4, 2016, to serve as the manager of MCP's Automated Traffic Enforcement Unit (ATEU). He subsequently terminated his employment effective February 26, 2021. Hetherington began working for BusPatrol on March 8, 2021, as the director of program management.

.... According to Ethics Commission records, Hetherington filed financial disclosure statements for each of the years he was employed with the county and attended ethics training in June 2017, during which post-employment restrictions were discussed.

The ATEU is charged with the operation of the red light and speed camera programs. State law requires that all citations for violations of traffic laws that are based upon automated enforcement equipment be reviewed and approved by a sworn law enforcement officer prior to issuance.¹ As such, the ATEU serves as the final adjudicator of suspected violations identified by the red light and speed cameras, as well as those obtained from externally-mounted school bus cameras. For the red light and speed camera programs, MCP contracts with a private company called Conduent to install and

¹It is Mr. Hetherington's understanding that school bus stop arm program citations are reviewed and approved by civilian employees within the ATEU.

maintain the cameras, conduct an initial review of potential citations, and supply the ATEU with a staff member to perform data analytics.

As it relates to school bus cameras, the Montgomery County Public Schools (MCPS) contract with a private company called BusPatrol to install and maintain cameras on the entire school bus fleet and to conduct initial reviews of footage related to potential traffic violations captured by external bus cameras. MCPS representatives negotiated with Hetherington and others to establish a memorandum of understanding (MOU) between MCPS and MCP for the final review, adjudication and, pursuant to state law, issuance of bus camera violation citations. These functions are conducted by civilian staff and sworn law enforcement personnel assigned to the ATEU.

While serving as the ATEU manager, Hetherington directed the daily operations and had overall responsibility for ATEU's activities, including general supervisory responsibility of subordinate county employees and interacting with vendors contracted to provide services related to the camera programs. Reportedly, Hetherington did not review or approve BusPatrol invoices while serving as the ATEU manager; however, he was listed on MCPS' contract with BusPatrol as the county's "Program Manager and Technology Representative." As such, he participated infrequent meetings with BusPatrol staff to discuss matters related to the school bus safety program. Hetherington had direct access to BusPatrol's database (Alert Bus) which he used on a monthly basis to obtain data for MCP management.

Further, Hetherington represented the ATEU at multiple County Council committee briefings where the MCPS contract with BusPatrol was discussed. Of note, in a September 27, 2018, meeting before the Education Committee, Hetherington and former MCP Traffic Division Director, Captain Thomas Didone, attested to BusPatrol's capabilities

In an interview with the DIG, Hetherington stated that he received a job offer from BusPatrol and informed his supervisor, Didone, approximately one month before he resigned. Hetherington stated he and Didone discussed the ethics law at that time and concluded there would be no violation of the ethics law because Hetherington's role at BusPatrol would be different from his role at the ATEU and he would not have any direct dealings with MCP. Additionally, they agreed that since [Hetherington] was taking a new position with BusPatrol, Hetherington would not take part in upcoming meetings surrounding the renewal of the BusPatrol contract and related amendments. Hetherington did not seek additional advice from the Ethics Commission regarding his post-county employment.

Hetherington started as director of program management for BusPatrol on March 8, 2021, and continues in the same position today. His responsibilities include general oversight of program managers assigned to various BusPatrol clients], including MCPS.

Hetherington noted that he provides staff with advice on maintaining client relationships and procedural issues such as preserving evidentiary chain of custody. According to Hetherington, he does not deal directly with BusPatrol's contract with MCPS and refers any issues related to the MCPS contract to his supervisor or other BusPatrol employees. Hetherington provided however that he is kept apprised of any issues with the county contract as they may affect other clients, and in anticipation of the ethics law prohibitions expiring and his expected future interactions with the county's program. Current MCP staff interviewed stated they have not dealt directly with Hetherington since he started in his new position at BusPatrol.

[Matthew] Burns told the OIG that he is a senior program manager with BusPatrol and reports directly to Hetherington. In this role, Burns interfaces directly with clients, to include MCPS and MCP. Burns provided that he believes Hetherington [...is] prohibited by law from discussing or dealing with the MCPS contract because of [his] former employment with the county. Burns stated that in previous instances in which he sought advice from Hetherington related to Montgomery County, Hetherington directed him to consult with BusPatrol's Chief Operations Officer or the Vice President of Field Services. Burns offered that BusPatrol Chief Executive Officer Jean Souliere recently contacted him regarding an issue with the MCPS contract and explained that Hetherington ... could not be involved in the resolution.

Our investigation established that Hetherington ...[s] employment with the county required varying degrees of interaction with BusPatrol BusPatrol continues to operate the school bus camera program on behalf of MCPS, but MCP staff, BusPatrol's senior program manager, and both former employees assert that Hetherington ...ha[s] no involvement in the day-to-day management of BusPatrol's contract with MCPS. We observed however that Hetherington supervises the BusPatrol program manager assigned to the MCPS contract.

Although Mr. Hetherington maintains that he did not knowingly violate the ethics law and that he believed in good faith that he at all times acted ethically and appropriately, he nevertheless acknowledges that the Ethics Commission has reasonable cause to believe that he committed a potential violation of the ethics law. Within a year of Mr. Hetherington's effective date of termination from County employment, Mr. Hetherington entered into an employment understanding with a business, BusPatrol, after he significantly participated in the prior three years in program and technology related matters with respect to the contract between BusPatrol and MCPS. The MCP, through the terms of the MCPS and BusPatrol contract and the MCP's Memorandum of Understanding with MCPS, performed important functions in the administration of the school bus camera program that was the subject of the contract between BusPatrol and MCPS, and Mr. Hetherington was intimately involved in MCP's performance of its significant role in the school bus camera program.

While Mr. Hetherington states that he discussed the ethics implications of taking a job with BusPatrol with his supervisor, he did not bring the legal issues associated with the coverage of the post-employment bar to the attention of the Montgomery County Ethics Commission or the County Attorney's legal counsel to the Montgomery County Police. The discussion between Mr. Hetherington and his supervisor apparently did not address the one-year employment bar imposed by 19A-13(b). Moreover, Hetherington's "anticipation of the ethics law prohibitions expiring and his expected future interactions with the county's program" reflects a lack of understanding of the ethics law's permanent bar also. The report that Mr. Hetherington concluded "there would be no violation of the ethics law because Hetherington's role at BusPatrol would be different from his role at the ATEU and he would not have any direct dealings with MCP" reflects a deep misunderstanding of the requirements, as the one year bar precludes *any* employment where applicable for one year and the permanent bar does not just prohibit contact with the County but any work on or assistance in connection with the covered matter, whether there is contact with the County or not.

In lieu of Ethics Commission taking further action in this matter, Mr. Hetherington agrees to the following:

Mr. Hetherington and the Ethics Commission agree that:

1. Mr. Hetherington will not work on, advise, or assist in any way with respect to any Montgomery County matter concerning any existing contract and any follow-on contract with the MCPS or the MCP relating to school bus cameras. Furthermore, Mr. Hetherington will not, while working for BusPatrol, supervise any BusPatrol employee's work on contract matters with the MCPS or the MCP. To the extent any BusPatrol employee reports to Mr. Hetherington and is assigned to any responsibilities relating to contracts with Montgomery County, Mr. Hetherington will arrange to be shielded from supervising or being informed of any matters relating to the execution of the Montgomery County contracts.
2. Mr. Hetherington will pay the County \$2,500 to resolve this matter within 15 (fifteen) days of his receipt of written confirmation from the Ethics Commission that it agrees to the terms of this Proposal to Cure.
3. The Commission will immediately close its investigation concerning the matters addressed in the Inspector General's November 18, 2021, report without further proceedings. This Proposal to Cure is solely for the purpose of resolving the issues set forth above and (i) will not be construed as admission that the facts and findings set forth above are true or accurate and (ii) cannot be used in any proceeding against or investigation of Mr. Hetherington or any third party.
4. The failure to make the agreed-upon payment by Mr. Hetherington 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. Hetherington 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. Hetherington.

If the Proposal to Cure is accepted by the Ethics Commission, the acceptance will confirm an agreement that is binding on Mr. Hetherington and the Ethics Commission only. Mr. Hetherington recognizes that the Ethics Commission does not have any authority to bind any other agency, and Mr. Hetherington also recognizes that the conduct referenced in this document may subject him to the imposition of civil/or criminal penalties by other government authorities who are not a party to this agreement.


Richard Hetherington (Jan 28, 2022 10:11 EST)

Jan 28, 2022

Richard Hetherington

Date

ACCEPTED AND AGREED:

 2/7/2022

Susan Beard

Date

Chair

For the Montgomery County Ethics Commission