Proposal to Cure - Thomas Tokarz

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.
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> (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.
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> (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:
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> (1) in regulating the person or business; or
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> (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).
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> (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 Thomas Tokarz 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 employee . . . Thomas Tokarz 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.
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> Thomas Tokarz was hired as an administrative specialist in the ATEU on March 5, 2018, and subsequently terminated his employment effective May 14, 2021. Tokarz began working for BusPatrol on June 14, 2021, as the assistant director of program management. The OIG verified with the Ethics Commission that based upon his position, Tokarz was not required to file an annual financial disclosure statement or attend related periodic ethics training.
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> 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

[1] It is Mr. Tokarz'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 [the MCP] 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.

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As an administrative specialist working in the ATEU, Tokarz managed the administrative elements of the ATEU, including supervision of ten civilian police department employees who were engaged in the processing of citations received from BusPatrol. In that role, Tokarz performed a range of supervisory duties, to include approving time and leave requests and conducting employee evaluations. Tokarz reviewed staff assessments and made decisions on the approval and dismissal of prospective citations. He additionally assigned staff to validate information in response to complaints regarding issued citations. Tokarz reported that he also worked with BusPatrol staff to improve video and image quality as needed and participated in biweekly meetings with BusPatrol to discuss program issues.

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In an interview with the OIG, Tokarz said that after terminating his employment with the county, he was offered a position with BusPatrol. He subsequently accepted the position and started as the assistant director of program management for BusPatrol on June 14, 2021. Tokarz described his responsibilities as managerial, including advising program managers on local laws and assisting with the development of citation templates for each jurisdiction. Tokarz noted that he avoids working on the MCPS contract and directs all related questions to the current program manager, Matthew Burns.

. . . .

Our investigation established that . . . Tokarz's employment with the county required varying degrees of interaction with BusPatrol. [Tokarz] obtained employment with BusPatrol soon after leaving county service. BusPatrol continues to operate the school bus camera program on behalf of MCPS, but MCP staff, BusPatrol's senior program manager, and [Tokarz] assert[s] that . . . Tokarz ha[s] no involvement in the day-to-day

management of BusPatrol's contract with MCPS. . . .

Although Mr. Tokarz 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. Tokarz's effective date of termination from County employment, Mr. Tokarz entered into an employment understanding with a business, BusPatrol, after he significanty participated in the prior three years in matters related to the administration of the school bus camera program, a program that is carried out through a 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. Tokarz was intimately involved in MCP's performance of its significant role in the school bus camera program.

Mr. Tokarz 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. There is no evidence indicating that Mr. Tokarz was trained or counseled regarding the requirements of the post-employment provisions, and when Mr. Tokarz joined BusPatrol, his former MCP supervisor who had also been involved in matters relating to BusPatrol, had been working for BusPatrol for a few months. 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. Tokarz agrees to the following:

Mr. Tokarz and the Ethics Commission agree that:

1. Mr. Tokarz 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. Tokarz 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. Tokarz and is assigned to any responsibilities relating to contracts with Montgomery County, Mr. Tokarz will arrange to be shielded from supervising or being informed of any matters relating to the execution of the Montgomery County contracts.
2. Mr. Tokarz will pay the County $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 Consent Order.

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 Consent Order is solely for the purpose of resolving the issues set forth above and (i) will not be construed as an 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. Tokarz or any third party.
4. The failure to make the agreed-upon payment by Mr. Tokarz 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. Tokarz 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. Tokarz.

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

1/27/22

Thomas Tokarz Date

ACCEPTED AND AGREED:

Susan Beard 2/7/2022

Susan Beard Date
Chair
For the Montgomery County Ethics Commission