



MONTGOMERY COUNTY ETHICS COMMISSION

Susan Beard
Chair

Bruce Romer
Vice Chair

July 23, 2021

Waiver 21-07-010

Pursuant to 19A-13(b) of the Montgomery County Public Ethics Law, 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 in regulating the person or business; or 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).

Pursuant to 19A-8(c) of the ethics law, after receiving a written request, the Commission may waive the prohibitions of Section 19A-13(b) if it finds that failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees or if it finds the proposed employment is not likely to create an actual conflict of interest.

Stacy Spann, the Executive Director of the Housing Opportunities Commission (HOC) has requested a waiver of the provisions of 19A-13(b) with respect to his agreement to work for MidCity Development after he terminates service with the HOC on July 31, 2021.

MidCity and the Ford Family Companies

MidCity is a part of a trio of companies called the Ford Family Companies. The other two companies, Edgewood Management and Vantage Management, are engaged in a substantial number of contracts with the HOC as managers of HOC properties.

Mr. Spann requested the waiver without conceding that the prohibition of 19A-13(b) would apply to his employment with MidCity, as MidCity neither contracts with nor is regulated by the HOC. However, the Commission views MidCity as the same “person or business” as Edgewood and Vantage for purposes of application of 19A-13(b).

The companies are closely related as reflected on the Ford Family Companies website. They have overlapping boards of directors, identical chairs of the board, and missions and activities that are intertwined. The Commission recognizes that these are three separately incorporated entities with different portfolios of business and management teams. To effect the mandate of

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the ethics law and its direction to interpret the law to effect its purposes, the Commission looks at the circumstances as a whole to determine the identity of the person or business with which an employee may be barred from working for one year as provided in 19A-13(b). Here, the Commission determines that the person or business is the Ford Family Companies, even though that enterprise is comprised of three separate corporate entities.

Significant Participation

Mr. Spann's waiver request also does not concede that his participation in matters affecting Edgewood Management and Vantage Management constituted "significant participation."

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.

The Commission concludes that Mr. Spann's participation was significant. He is the Executive Director of an organization dedicated to providing affordable housing to enhance the lives of low and moderate income families and individuals; the Edgewood/Vantage property management contracts fulfilled significant roles in the fulfillment of the HOC mission. With respect to the contract itself, Mr. Spann, among other things, implements the decisions of the HOC to negotiate and execute the contract documents as approved by the HOC, including the Edgewood/Vantage contracts. The Ethics Commission finds that carrying out the responsibilities of the Executive Director of the HOC in the execution of the contract and in assuring that the contract fulfills the objectives of the HOC in carrying out its mission constitute significant participation in the Edgewood/Vantage contracts.

As a consequence of the finding of significant participation and that the business for purposes of application of 19A-13 is the Ford Family Companies, the one year bar of 19A-13(b) applies, meaning that Mr. Spann is prohibited from working for the Ford Family Companies for one year after leaving County service, unless a waiver is obtained from the Ethics Commission. In addition, 19A-13(a) permanently prohibits Mr. Spann from assisting others (in particular the Ford Family Companies) with respect to any of the existing contracts Edgewood or Vantage have with the County.

No Actual Conflict of Interest

Upon consideration of Mr. Spann's request for a waiver, the Commission finds that Mr. Spann's employment with MidCity after he leaves the HOC is not likely to create an actual conflict of interest, especially with the conditions the Commission is imposing in granting the waiver.

The determination that an actual conflict of interest is not likely is primarily due to MidCity not having any business before the HOC. Also, in carrying out his duties as President and Chief Executive Officer of MidCity, Mr. Spann would have no need for confidential information learned as an HOC employee and would not be expected to work on any specific matters he worked on while an HOC employee. While Edgewood and Vantage would be expected to

continue having business before the HOC, Mr. Spann would not have any responsibilities in connection with those activities as President and Chief Executive Officer of MidCity, a separate corporate entity of the Ford Family Companies.

The Commission's discretion to issue a waiver of 19A-13(b) would negatively be affected if the Commission believed there was a likelihood of a violation of a provision of the ethics law concerning conflicts of interest involving an entity an employee is negotiating with for employment, 19A-11(a)(2)(C). This provision is intended, among other things, to prohibit employees from ingratiating themselves to contractors to create employment opportunities for themselves.¹

19A-11(a)(2)(C) provides:

Unless permitted by a waiver, a public employee must not participate in . . . any matter if the public employee knows or reasonably should know that any party to the matter is . . . any business with which the public employee has an active application, is negotiating, or has any arrangement for prospective employment.

The Commission notes that this provision requires an employee to know that a business with which the employee is seeking employment is a party to a matter before the employee. Here, this would have required that Mr. Spann knew that Edgewood and Vantage would have been considered the same entity as MidCity for purposes of application of the bar. It would not be reasonable to consider that Mr. Spann would have known this.

Commission staff obtained information relevant to the question of whether Mr. Spann's participation in Edgewood/Vantage matters was impartial. Commission staff contacted several members of the HOC staff regarding the extent of Mr. Spann's involvement in Edgewood/Vantage related matters and whether HOC staff had any concerns regarding the impartiality of Mr. Spann with respect to his involvement. HOC staff contacted by Ethics Commission staff confirmed that Mr. Spann's role in contract matters involving Edgewood and Vantage was limited. Importantly, each person contacted stated they had no sense of any lack of impartiality regarding Mr. Spann's role. Also, HOC staff indicated that due to Covid-19 and its impact on the HOC's mission of providing affordable housing, there was an unwavering approach to contract activity during most of 2020 through the Spring of 2021. The approach was to cause as little disruption as possible to residents of HOC housing such as would occur through, among other things, changing management contractors. Therefore, during this period contracts were renewed with existing property managers. As a consequence of this, there was little opportunity for any HOC employee, much less one whose primary role in contract matters is to implement HOC's decisions to approve contract actions, to exercise any significant discretion regarding contract award decisions.

¹ The Commission notes the parallel restriction on "a person engaged in a procurement with the County" offering employment to a County employee who significantly participates in the procurement. See 11B-52(a). The County's procurement laws do not typically apply to HOC contracts, but this procurement provision could, in theory, be viewed differently by the Ethics Commission. Additionally, for this provision to be applicable, the Commission would have to find that MidCity was "a person engaged in a procurement with the County."

The Ethics Commission conditions the waiver on the following:

Mr. Spann may not work on any matter affecting any of the Ford Family Companies during the remainder of his term as Executive Director of the HOC; he may not share with the Ford Family Companies confidential information learned while an HOC employee; and he may not, while employed by MidCity, work on any specific matter that he worked on while a County employee, including any existing Edgewood or Vantage contract. Also, he may not make any communication or appearance before the HOC on behalf of MidCity or any other of the Ford Family Companies in connection with any matter for one year after terminating County service.

In issuing this waiver, the Commission notes that while the Montgomery County Public Ethics Law imposes the one-year post-employment bar of 19A-13(b), the State ethics law imposes no such restriction. As the restriction expands upon the State law upon which the County's ethics law is based in issuing this waiver, the Commission is reluctant to impose the added bar where a conflict of interest is unlikely. The Commission also notes that Mr. Spann's request for a waiver received the strong support of the Chair of the HOC. The waiver is issued based on the facts that were presented and such other information noted in the waiver, including the conditions placed on the waiver's issuance.

For the Commission:

A handwritten signature in cursive script that reads "Susan Beard".

Susan Beard, Chair