



MONTGOMERY COUNTY ETHICS COMMISSION

Susan Beard
Chair

Bruce Romer
Vice Chair

October 4, 2021

Waiver 21-10-014

Office of the County Attorney employee Charles Frederick requested an advisory opinion as to whether the one-year bar of post-employment provision at 19A-13(b) of the ethics law prohibits him from working at the Washington Suburban Sanitary Commission (“WSSC”) and if so, for the Commission to waive application of the prohibition pursuant to its authority under 19A-8(c). The Commission has decided to waive the application of 19A-13(b) to Mr. Frederick’s employment with WSSC. The Commission was informed that Mr. Frederick’s employment with WSSC would begin October 4, 2021.

Mr. Frederick, as an attorney in the County Attorney’s office, had, over the past few years and as recently as August 26, 2021, advised the Department of Permitting Services (DPS) in connection with a memorandum of understanding DPS had with WSSC (“MOU”) first entered into in 2015. There are two post-employment provisions in the County’s ethics law. The permanent bar of 19A-13(a) prohibits a former public employee from working on or otherwise assisting any party other than the County in a specific matter if the employee significantly participated in the matter as a public employee. 19A-13(b) prohibits working for a “person or business” where in the past three years the person had worked on a contract matter involving that person or business.¹ The primary legal issue raised for which the advisory opinion was sought is whether WSSC is considered a “person or business” for purposes of application of 19A-13(b).

The timeframes for the Ethics Commission to make a decision on the request for advisory opinion and in the alternative a waiver were exceptionally narrow, given the request for a

¹ 19A-13(b) provides: 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.

waiver was received on September 23, 2021 and the contemplated employment was to begin October 4. In addition, after receiving Mr. Frederick's request, Commission staff sought additional information from Mr. Frederick and others to ensure that if the Commission were to issue a waiver, doing so would not be inconsistent with the intent of the ethics law. Of particular concern was the proximity of Mr. Frederick's being hired by WSSC and the recency of advice he had given to DPS concerning the MOU.

The MOU arranged for WSSC permits to be available to the public in the same DPS location that DPS permits could be obtained. WSSC was allowed a small amount of DPS space with a view that the public would not have to go to two places to obtain permits. In 2020 the MOU was amended to extend the term. In 2021, DPS was thinking about making a change to the relationship under the terms of the MOU. The information provided by Mr. Frederick and others to the Ethics Commission confirmed that the matter involving WSSC on which advice was recently rendered was a minor matter and the advice to the County agency by Mr. Frederick was routine and incidental to the matter.

19A-8(c) of the ethics law provides: (c) After receiving a written request, the Commission may waive the prohibitions of Section 19A-13(b) if it finds that:(1) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or (2) the proposed employment is not likely to create an actual conflict of interest.

After consideration of Mr. Frederick's request, the concurrence in the request of the County Attorney (Mr. Frederick's agency head) and the additional information obtained by the Ethics Commission, the Commission determined that issuing a waiver of the prohibition of 19A-13(b) would not be likely to create an actual conflict of interest and is consistent with the intent of the ethics law. Given the time constraints, the Commission did not issue an advisory opinion on the legal issue raised in the request for an advisory opinion.

The waiver is conditioned on Mr. Frederick not advising WSSC where Montgomery County is a party to a matter for one year (and that he otherwise comply with the permanent bar of 19A-13(a) on assisting on matters he worked on as a County employee.) The waiver is issued based on the facts that were presented and the conditions placed on the waiver's issuance.

For the Commission:



Susan Beard, Chair