



MONTGOMERY COUNTY ETHICS COMMISSION

Waiver 22-03-006

March 13, 2022

The Montgomery County Economic Development Corporation (MCEDC) is seeking a waiver of County Code Section 11B-52(a) to hire Ms. Laurie Boyer Babb.

Section 11B-52(a) provides:

- a. Unless authorized by law or the Ethics Commission under Chapter 19A, a person while engaged in a procurement matter with the County must not employ or offer to employ a public employee if the duties of the public employee include significant participation in the procurement matter. Public employee, employ, and significant participation, as used in this section, are defined in Chapter 19A.

The Ethics Commission has decided to grant MCEDC a waiver and imposes a condition on the waiver's issuance that corresponds to the condition placed on a waiver granted to Ms. Babb in connection with her employment by MCEDC.

The County's ethics laws ensure public integrity with respect to County employees negotiating with or taking jobs with vendors of the County. The law's framework includes the conflict of interest prohibition in 19A-11 on a public employee working on a matter affecting an entity with which the employee has an application or is negotiating for employment; the post-employment permanent bar of 19A-13(a) on assisting anyone other than the County with respect to a specific matter that the employee significantly participated in as a public employee; and the one-year bar of 19A-13(b) on a former employee being employed by a person or entity where the public employee significantly participated in regulating or in contractual activity with the person or entity. A former employee also is prohibited from using confidential information gained while a public employee for private gain. To complement the restrictions on public employees and former public employees, vendors to the County are prohibited by the procurement integrity provisions of County procurement law at 11B-52(a) from employing or offering to employ a public employee if the duties of the public employee include significant participation in the procurement matter with the vendor.

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This framework of laws is generally intended to assure that County employees are objective and impartial in the execution of their duties. More specifically, these laws are intended to prevent the real or appearance of corruption associated with the "revolving door" between government service and private entities. Dealings with vendors are not to be, in effect, one long job interview where County employees are "feathering their nests" and seeking opportunities with the very persons who are affected by the conduct of their County jobs. And the provision of 11B-52(a), applicable to vendors, is to keep them from corrupting County employees who they deal with and to prevent the vendors from inducing employees to violate the ethics provisions that are applicable to the employees.

MCEDC is designated, in accordance with Chapter 15A of the County Code, as the County's economic development corporation. Pursuant to 15A-4(a)(3), a designee is:

(3) incorporated for the purpose of serving as the County's Economic Development Corporation and implementing the County's economic development strategic plan, adopted under Section [20-76](#), and related programs. These programs must include:

- A. attracting and retaining businesses;
- B. facilitating economic, industrial, and commercial development in the County;
- C. encouraging investment in commerce, industries, and businesses in the County;
- D. promoting job growth and talent attraction, in coordination with the Montgomery County Workforce Development Board;
- E. advising and informing County officials on economic development matters;
- F. providing services to resident businesses in the County, including business retention, counseling, business planning, and other services to maintain and grow the existing economic base;
- G. stimulating and nurturing the development of new business;
- H. supporting minority, female, and disabled owned businesses, including assisting minority, female, and disabled owned businesses to gain access to capital; and
- I. promoting the development of a vital and balanced economy.

MCEDC is “not an instrumentality of the County.” 15A-4(a)(d). Its members are not, by virtue of membership on the MCEDC, public employees of the County subject to Chapter 19A of the County Code. Chapter 15A provides that the designee’s bylaws must have certain attributes more typically associated with public entities, including compliance with the Maryland Open Meetings law and the Maryland Public Information Act. MCEDC is also required to “protect against any conflict of interest or similar impropriety by members of the Board of Directors or the Executive Director or any other employees.”

Pursuant to 15A-3(e), the bylaws must include:

1. a prohibition against self-dealing and collusive practices;
2. a provision for the disclosure of a financial or similar interest of any person in any matter before the corporation that would create a conflict of interest;
3. a provision establishing conditions under which a person is disqualified from participating in decisions or other actions in which there is a conflict between the person’s official duties and private interests;
4. appropriate remedies for a violation of the bylaws, including removal or termination; and
5. a policy to protect whistleblowers.

MCEDC has a contract with the County pursuant to which the County obtains the services of MCEDC to carry out its role as the County’s economic development designee. That contract includes standard terms and conditions of County contracts, including a provision that states that the Contractor is required to abide by the requirements of Section 11B-52(a) concerning “the prohibition on a person engaged in a procurement from employing or offering to employ a public employee.” (The Commission notes that the standard contract language is more inclusive than the statutory language in 11B-52(a) as that provision only extends to employment or offers of employment to public employees significantly participating in procurement matters.)

As the County’s economic development designee, MCEDC’s existence is a function of Montgomery County law. In that law, Chapter 15A, there is no suggestion that the laws concerning the “revolving door” would be suspended with respect to the County’s designee for economic development. MCEDC is an entity that is subject to 11B-52(a), and its contract with the County makes that clear.

Chapter 19A-8(a) provides:

- a. After receiving a written request, the Commission may grant to a public employee or a class of public employees a waiver of the prohibitions of this Chapter and Sections 11B-51 and 11B-52(a) if it finds that:
 1. the best interests of the County would be served by granting the waiver;
 2. the importance to the County of a public employee or class of employees performing official duties outweighs the actual or potential harm of any conflict of interest; and
 3. granting the waiver will not give a public employee or class of employees an unfair economic advantage over other public employees or members of the public.

A majority of the Commission (3-2) finds that the waiver standard in 19A-8(a) has been met. With respect to the waiver issued to Ms. Babb, the Commission in part relied on the support of the Chief Administrative Officer for the issuance of the waiver. That support of the CAO indirectly applies to this request: in order for the waiver to Ms. Babb to have any meaning, a waiver here would also have to issue. It is fair to presume that it is in the best interests of the County for the economic development corporation to be successful in carrying out its statutory mandate as that mandate is approved County law. The MCEDC's freedom to hire persons that it believes will help it to fulfill its mandate would normally also be in the County's best interests. The CAO is in many respects in a position to judge whether the best interest of the County would be served by an employee working on economic development matters being hired by the County's economic development corporation. And here the CAO has approved that hiring by supporting Ms. Babb's request for a waiver. Accordingly, the Commission finds that the issuance of the waiver to MCEDC is in the best interest of the County.

The waiver standard of 19A-8(a)(2) is read here as whether the benefit to the County is greater than the potential harm in granting the waiver. Again, the Commission cites to the support for the waiver of the CAO. While the general rationale for the post-employment restrictions and procurement integrity provision of 11B-52(a) are extremely important, in this particular instance there appears to be no sign of actual harm associated with MCEDC's hiring of Ms. Babb. Ms. Babb was collaborating with MCEDC as a County employee. She was not a contract administrator, processing invoices, or otherwise involved in making determinations about payment to MCEDC on its contract with the County.

As to the third requirement of a 19A-8(a) waiver, there is no reason to believe that MCEDC's hiring of Ms. Babb was unfairly conducted in terms of opportunity to other County employees or private citizens. The fact that Ms. Babb has the skills and ability that make her an attractive

candidate does not in any way mean that she has an unfair economic advantage in seeking a position with MCEDC.

This waiver is conditioned on Ms. Babb's compliance with the requirements of 19A-13(a), as outlined in the Commission's waiver of 19A-13(b), issued along with this waiver. This waiver has been issued in reliance upon the facts supplied to the Commission by MCEDC and Ms. Babb in connection with this matter.

For the Commission:

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

Susan Beard, Chair