

ADVISORY OPINION

The Ethics Commission reviewed a request from a former County employee seeking an advisory opinion regarding whether the employee could work as a sub-consultant under a personal services contract to a joint venture of two consulting engineering firms contracting with the Maryland State Department of Transportation. The State contract provides engineering services for the “Final Environmental Impact Study” (Final EIS) of a proposed light rail transit line and hiking trail between Bethesda and Silver Spring. The role of the former employee in this new project would be to provide occasional assistance to the State’s consultant team as they update various issues addressed in the prior study and to provide advice on strategies for public input.

FACTS PRESENTED

The request indicated that the requester, while employed by Montgomery County, was involved in the “Preliminary EIS” study of the same project conducted by a different consultant to the State, and that the requester, while employed by Montgomery County, served as a member of an ad-hoc advisory group of State and local technical staffs which planned and budgeted for an interim walking trail to be built within the light rail line right of way owned by the County. The request also indicated that although the requester had contract administration responsibilities, those responsibilities had nothing to do with the joint venture contractors on the Final EIS.

APPLICABLE LAW

The Montgomery County Public Ethics Law restricts the post-County employment of former County employees as follows:

- (a) A former public employee must not accept employment or assist any party, other than a County agency, in a case, contract, or other specific matter for 10 years after the last date 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 that contracts with a County agency if the public employee:
 - (1) significantly participated in regulating the person or business; or
 - (2) had official responsibility concerning a contract with the person or business (except a non-discretionary contract with a regulated public utility).
- (c) Significant participation means direct administrative or operating authority to approve, disapprove, or otherwise decide government action with respect to a

specific matter, whether the authority is intermediate or final, exercisable alone or with others, and exercised personally or through subordinates. It ordinarily does not include program or legislative oversight, or budget preparation, review, or adoption.¹

In addition, post-employment opinion requests also may implicate the Ethics Law's prohibition on the disclosure of confidential information:

- (a) Except when authorized by law, a public employee or former public employee must not disclose confidential information relating to or maintained by a County Agency that is not available to the public. A public employee or former public employee must not use confidential information for personal gain or the gain of another. Unless expressly prohibited by law, a public employee may disclose validly obtained confidential information to another public employee if the other public employee reasonably needs the information to carry out the employee's official duties.²

CONCLUSION

Based on the request's representations that the requester, as a County employee: (1) had no contract responsibilities except in regard to inter-agency funding agreements with WMATA and the State; and (2) was not involved in any contracts that the County held or holds with the two contractors with which the requester intends to subcontract, the Commission has determined that the Montgomery County Public Ethics Law does not prohibit the requester from entering into a contract with the joint venture engineering firms. The former contract was a contract with the State of Maryland, not Montgomery County; and did not involve either of the joint venture firms with whom the State is now contracting; and the requester neither significantly participated in nor had official responsibility for that contract or for any contract between Montgomery County and either of the joint ventures with which the requester would now contract.

May 15, 2002

[signed]

Elizabeth K. Kellar, Chair

¹ MONT. CO. CODE § 19A-13.

² MONT. CO. CODE § 19A-15.