



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

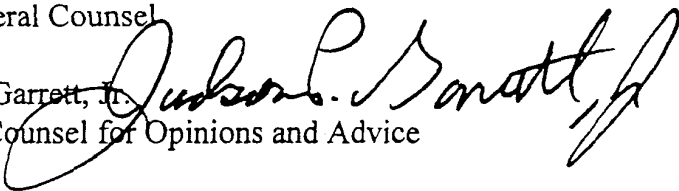
Charles W. Thompson, Jr.
County Attorney

OPINION

May 28, 2002

TO: Elizabeth Kellar, Chair
Montgomery County Ethics Commission

THROUGH: Marc P. Hansen
Chief General Counsel

FROM: Judson P. Garrett, Jr. 
Principal Counsel for Opinions and Advice

RE: Meaning of the Term "Official Responsibility"

We are responding to your request for our opinion concerning the construction of the term "official responsibility" as used in the post-county-employment provisions of the Montgomery County Public Ethics Law (Montgomery County Code, § 19A-13(b).

QUESTION ADDRESSED

Does the term "official responsibility," as used in the post-county-employment provisions of the Montgomery County Public Ethics Law, include giving advice, making recommendations, or participating as a member of a special projects contract negotiating team that is not authorized to execute or approve the contracts it negotiates?

ADVICE

The term "official responsibility," as used in the post-county employment provisions of the Montgomery County Public Ethics Law, means direct administrative or operating authority to approve, disapprove, or otherwise direct government action, and does not include giving advice, making recommendations, or serving as a member of a negotiating team..

APPLICABLE LAW

The “post-county” employment provision of the Montgomery County Public Ethics Law, entitled “Employment of former public employees,” provides 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

ANALYSIS

1. *Statutory Construction Principles.*

A statute is the written will of the legislative body that enacted it. The cardinal rule for interpreting a statute, therefore, is “to ascertain and carry out the real legislative intent,”² and the beginning point for divining legislative intent is the language of the law itself.³ “[W]hat the [legislative body] has written in an effort to achieve a goal is a natural ingredient of

¹ MONT. CO. CODE §19A-13. (Emphasis added.)

² *State v. Pagano*, 341 Md. 129, 133 (1996).

³ *Morris v. Prince George's County*, 319 Md. 597, 603 (1990).

analysis to determine that goal.”⁴ Therefore, “the words used are to be given ‘their ordinary and popularly understood meaning, absent a manifest contrary legislative intention.’”⁵

Nevertheless, ascertainment of the meaning apparent on the face of a statute need not end the inquiry.⁶ “Although the words of a statute are the starting point for ascertaining the legislative intent, they must not be read in a vacuum but should be considered in light of other manifestations of legislative intent.”⁷ “The ‘meaning of the plainest language’ is controlled by the context in which it appears.”⁸ “Thus, we are always free to look at the context within which statutory language appears.”⁹ “Even when the words of a statute carry a definite meaning, we are not ‘precluded from consulting legislative history as part of the process of determining the legislative purpose or goal’ of the law.”¹⁰ We may [therefore,] consider other “external manifestations” or “persuasive evidence.” These include the cause or necessity of the law;¹¹ its objectives and purposes;¹² its history;¹³ its relationship to earlier and subsequent legislation;¹⁴ prior and contemporaneous statutes;¹⁵ and other material that fairly bears on the fundamental issue of legislative purpose or goal, which becomes the context within which the particular language is read in a given case.¹⁶ “This enables us to put the statute . . . in its proper context and thereby avoid unreasonable or illogical results that

⁴ *Kaczorowski v. Baltimore*, 309 Md. 505, 513 (1987).

⁵ *Privette v. State*, 320 Md. 738, 744 (1990) (quoting *In re Arnold M.*, 298 Md. 515, 520 (1984)).

⁶ *Kaczorowski*, 309 Md. at 514.

⁷ *In re Douglas P.*, 333 Md. 387, 393 (1994).

⁸ *Kaczorowski*, 309 Md. at 514 (quoting *Guardian Life Ins. Co. of America v. Ins. Comm'r*, 293 Md. 629, 642 (1982)).

⁹ *Morris*, 319 Md. at 603-04.

¹⁰ *Id.* (citations and footnote omitted).

¹¹ *Smith v. Higinbotham*, 187 Md. 115, 125 (1946).

¹² *Clark v. State*, 2 Md. App. 756, 761 (1968).

¹³ *Welsh v. Kuntz*, 196 Md. 86, 93 (1950).

¹⁴ See n.24, *infra*.

¹⁵ *Department of Tidewater Fisheries v. Sollers*, 201 Md. 603, 611 (1953).

¹⁶ *Kaczorowski*, 309 Md. at 514-515.

defy common sense.”¹⁷

2. *History of Montgomery County’s Post-County Employment Restrictions.*

Montgomery County’s post-county-employment restrictions are rooted in a 1978 amendment to what has become popularly known as the Montgomery County Procurement Law.¹⁸ That legislation created an “Ethics in Public Service and Contracting” title (now “Contracts, Procurement Matters and Public Ethics”) of the County Code that, among other things, imposed the following restrictions on former county employees:

(1) It shall be unlawful for any former public employee to knowingly act as broker, attorney, agent, representative or employee, for anyone other than the County in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, grant, claim, controversy, charge, or other particular matter involving a contract where the County is a party or directly or substantially interested, and *in which he or she participated personally and substantially as a public employee or was the subject of his or her official responsibility.* As used herein, the term “*official responsibility*” means direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, *to approve, disapprove, or otherwise direct government action.*

(2) It shall be unlawful for any former public employee to enter into any type of express, implied or tacit understanding or arrangement with any person who is a contractor for a period of one year following the effective date of the public employee’s termination from government employment, if the employee personally and substantially participated in the regulation or control of such person or had *official responsibility concerning a contract* with such person.¹⁹

In 1983, the County enacted legislation that created its first comprehensive Public Ethics Law. That legislation also repealed and reenacted, with amendments, the Ethics in Public

¹⁷ *Adamson v. Correctional Medical Services, Inc.*, 359 Md. 238, 251-52 (2000) (quoting *Sinai Hospital of Baltimore v. Dept. of Employment and Training*, 309 Md. 28, 40 (1987)).

¹⁸ MONT. CO. CODE Ch. 11B (“Contracts, Procurement Matters and Public Ethics”).

¹⁹ 1978 L.M.C., ch. 22 § 2 (Bill No. 20-77)(codified at MONT. CO. CODE §11B-51 (b))(effective June 1, 1978). (Emphasis added.)

Service and Contracting provisions.²⁰ In pertinent part, the comprehensive Public Ethics Law contained the following post-county employment restrictions:

(1) A former official or employee may not assist or represent a party other than the County or an agency, for compensation in a case, contract or other specific matter involving these entities if that matter is one in which he significantly participated as an official or employer. *Significant participation* includes direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subdivisions, to approve, disapprove or otherwise direct government action with respect to the matter.

(2) A former official or employee may not enter into any type of express, implied or tacit understanding or arrangement with any person or business entity, other than the County or an agency, who is a contractor with the County or an agency for a period of one year following the effective date of termination from government employment, if the employee personally and substantially participated in the regulation or control of such person or business entity or had official responsibility concerning a contract with such person or business entity.²¹

Therefore, as a result of the 1983 Act, the term "*official responsibility*" was defined in the post-county employment restrictions of the Ethics in Public Service and Contracting title (Title 11B)²² and the term "*significant participation*" was defined in the post-county employment restrictions of the Public Ethics title (Title 19A).²³

Although the 1983 Act did not amend the post-county-employment restrictions of the "Ethics in Public Service and Contracting" title, nevertheless, those provisions were set forth in the Act (apparently for general context purposes), and they: (1) involved the same subject

²⁰ See 1983 LAWS OF MONTGOMERY COUNTY, Ch. 1 (Bill 70/75-81)(adding "a new Chapter 19A, title 'Ethics' to the Montgomery County Code, 1972, as amended, for the purpose of establishing a public ethics law for Montgomery County")(effective January 1, 1983).

²¹ MONT. CO. CODE (1972, as amended), § 19A-8(e). § 11B-52(b) (1).

²² "*Official responsibility*" means "direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct government action."

²³ "*Significant participation*" includes "direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subdivisions, to approve, disapprove or otherwise direct government action with respect to the matter." § 19A-8(e)(1).

matter as the new and more general Public Ethics Law's post-county employment restrictions; (2) had a common purpose with the Public Ethic Law's post-county employment restrictions; (3) were not inconsistent with the Public Ethic Law's post-county employment restrictions; and (4) formed part of the same overall system of applying substantially identical ethical restraints to post-county employment. The post-county employment restraints of the two titles, therefore, are to be read *in pari materia* and construed harmoniously, each in light of the other, consistent with their common general object and scope.²⁴ For these reasons, we conclude that the term "*official responsibility*" as used in the Ethics title was intended to have the same meaning as in the then "Ethics in Public Service and Contracting" title.

In 1990, the Montgomery County Public Ethics Law was extensively revised.²⁵ In pertinent part, the post-county employment provisions of §19A-8(e) were moved to new § 19A-13, the language of the those provisions was rewritten²⁶, and the previous lifetime ban on a county employee ever working on a matter in which he or she had significantly participated as a County employee was reduced to a 10 year ban. In addition, the 1990 Act repealed the post-county employment provisions of the Procurement law—apparently reflecting an understandable legislative decision that there was no need for substantially similar post-county-employment provisions in both the Ethics Law and the Procurement Law.

²⁴ Statutes that relate to the same thing or general subject matter, and are not inconsistent with each other are *in pari materia*, and should be construed together so that they will harmonize with each other and be consistent with their general object and scope, even though they were passed at different times and contain no reference to each other. *See State v. Thompson*, 332 Md. 1, 7 (1993)(“when we are called upon to interpret two statutes that involve the same subject matter, have a common purpose, and form part of the same system, we read them *in pari materia* and construe them harmoniously”); *GEICO v. Insurance Comm’r*, 332 Md. 124, 132 (1993)(where the statute to be construed is a part of a statutory scheme, the legislative intention is determined by considering it in light of the statutory scheme); *Subsequent Injury Fund v. Chapman*, 11 Md. App. 369, 375 (1971), (“Statutes which relate to the same thing or general subject matter, and which are not inconsistent with each other are *in pari materia*, and should be construed together so that they will harmonize with each other and be consistent with their general object and scope, even though they were passed at different times and contain no reference to each other. [Citations omitted.] Consistent with this established rule of statutory construction, we think all Sections of the Workmen's Compensation Law (Article 101) must be read and considered together in arriving at the true intent of the Legislature, as they form part of a general system; indeed, the rule has been applied by the Court of Appeals in interpreting the Motor Vehicle Code (Article 66 ½), *May v. Warnick*, *supra*; the Retail Sales Tax Act (Article 81), *Comptroller v. Atlas General Industries*, 234 Md. 77; the Defective Delinquent Law (Article 31B), *Height v. State*, 225 Md. 251; and the Alcohol Beverages Code (Article 2B), *State v. Petrushansky*, 183 Md. 67”).

²⁵ *See* 1990 LAWS OF MONTGOMERY COUNTY, Ch. 21 (Bill 33-89) (effective April 26, 1990).

²⁶ For example, as introduced and enacted, the bill changed the verb “*includes*” to the more limited term “*means*” in the definition of “*significant participation*,” *i.e.*, “[s]ignificant participation *means* direct administrative or operating authority to approve, disapprove, [*etc.*].”

The legislative history of the 1990 legislation reflects a concern that the post-county-employment provisions of the Ethics Law be appropriately tailored. According to a report to the County Council:

“Significant participation” is defined at [page] 48/[lines] 1-8. At the last worksession, the Council asked staff to clarify this definition to make more explicit the kinds of oversight that do not fall with the definition, especially as it applies to Councilmembers and legislative staff.²⁷

In response to this legislative direction, the definition of the term “*significant participation*” was changed in two ways: (1) the verb “*decide*” was changed to the more limited verb “*direct*,”²⁸ (2) “program or legislative oversight, or budget preparation, review, or adoption” were excluded from the definition.²⁹

In addition, the minutes of the January 14, 1990, meeting of the County Council reflect a suggestion by the Ethics Commission that the one year prohibition be broadened, and the defeat of a motion “along the lines suggested by the Commission”:

Mr. Hansen, on behalf of the Ethics Commission, directed the Council’s attention to the language . . . concerning the employment prohibition which applies to former public employees. He said that the Ethics Commission is concerned about the language which prohibits for one year after the effective date of termination from County employment a former public employee from being employed by a business that contracts with a County agency. Mr. Leggett noted that the exceptions provided on page 48, lines 9-12, address this issue. Mr. Potter suggested various revisions to this section of the bill along the lines suggested by the Ethics Commission. *During discussion, Councilmembers Crenca and Gudis expressed concern about broadening the language as suggested Mr. Potter, with Ms. Crenca questioning the ability to enforce employment prohibitions if the language is broadened.* Mr. Potter moved to amend the language on page 48, lines 7-11, as follows:

. . . [that contracts with a County agency if] for which he: (1)

²⁷ December 5, 1989, Memorandum to County Council from Michael Faden, Senior Legislative Attorney and Elizabeth Beninger, Legislative Attorney, pp. 2-3.

²⁸ “Significant participation means direct administrative or operating authority to approve, disapprove, or otherwise [*direct*] decide government action with respect to a specific matter . . .” Bill 33-89, lines 14 - 19 (p. 48).

²⁹ “It ordinarily does not include program or legislative oversight, or budget preparation, review, or adoption.” *Id.*, lines 19-21.

significantly participated in regulating [the person or business;] or (2) had official responsibility concerning a contract [with the person or business].³⁰

There was no second to Mr. Potter's motion.

Thus, the post-county-employment restriction was amended to its current form:

(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.³¹

Against this background, it would be unreasonable and illogical to construe the scope of the term "*official responsibility*" to now exceed the scope of the term "*significant participation*." Prior to the 1990 Act, the statutory definitions of the two terms (one in Title 11B and the other in Title 19A) were substantially the same, and the two clearly were

³⁰ Minutes of the December 5, 1990, meeting of the Montgomery County Council, p. 14, (Subject: Emergency Bill No. 35-89, Public Ethics--Revision). (Emphasis added.)

³¹ MONT. CO. CODE § 19A-13. (Emphasis added.)

intended to be read *in pari materia* and as conterminous in scope.³² And nothing in the 1990 legislation suggests that it was intended to result in one term being broader in scope than the other. Therefore, in the context of the full legislative history of Montgomery County's post-government employment restriction, we advise that "*official responsibility*," as used in the Public Ethics Law, should be given the same meaning as it formerly had in the "Ethics in Public Service and Contracting" title, and should be construed to be substantially the same in scope as the term "*significant participation*" as clarified by the 1990 Act.

In sum, "*official responsibility*" means "having direct administrative or operating authority to approve, disapprove, or otherwise direct government action," and, therefore, does not include such functions as giving advice, making recommendations, or participating as a member of a County team that negotiates with the private sector on "special projects," but is not authorized to execute or approve the resulting contract.

I:\GJ\GARREJ\Opinions & Advice\Ethics op.wpd

³² Indeed, the only apparent reason for the use of two different terms to express the same restraint was that the term "*significantly participated*" was deemed to be a more appropriate description of the activities involved in the *regulation* of a person or business, and "*official responsibilities*" a more appropriate description of the same kinds of activities when they relate to a *contract* with a person or business.