



MONTGOMERY COUNTY ETHICS COMMISSION

Rahul K. Goel
Chair

Steven Rosen
Vice Chair

Montgomery County Ethics Commission Annual Report for Calendar Year 2018

I. Introduction

Section 19A-6(f) of the Montgomery County Public Ethics Law requires the Ethics Commission (the Commission) to publish an annual report. The report is to summarize the actions the Commission has taken during the preceding calendar year and describe each waiver it approved and advisory opinion it issued during the year.

The mission of the Commission is to promote the public's trust of County government through the independent administration, including enforcement, of laws designed to ensure the impartiality of County employees, including elected officials, in the execution of their responsibilities. It does this through the administration of three programs: financial disclosure, lobbying disclosure, and outside employment approval -- and through myriad other activities.

The Commission currently has five members which is a full complement under the Public Ethics Law. They, along with the respective dates of their terms' expiration, are:

Rahul Goel, Chair	10/2020
Steven Rosen, Vice Chair	10/2019
Kenita V. Barrow	10/2019
Susan Beard	10/2021
Bruce Romer	10/2021

Susan Beard and Bruce Romer were appointed to the Commission on April 17, 2018. The terms of members Barbara Fredericks and Claudia Herbert expired in October 2017; in accordance with the Public Ethics Law, members whose terms have expired serve until they are reappointed or the Council confirms a successor. Ms. Fredericks and Ms. Herbert served until April 17, 2018. Steven Rosen was Chair of the Commission during 2018, with Kenita Barrow serving as Vice Chair. At the December meeting of the Commission, Rahul Goel was elected Chair and Steven Rosen was elected Vice Chair for 2019.

MONTGOMERY COUNTY ETHICS COMMISSION

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In 2018, the Commission made substantial progress towards its primary objectives for the year. Going into the year 2018, the Ethics Commission reported the following objectives over and above the expectation to continue to successfully conduct required operations during the year:

- 1) Consolidate the program, established in 2017, for mandatory training for executive branch public financial disclosure filers;
- 2) Implement the new financial disclosure platform launched December 28, 2017;
- 3) Obtain approval from the County Council for ethics regulations and minor changes to the ethics law.

The steps taken to implement these objectives are described in the substantive program sections further below.

The Commission met in regular Public Meetings 9 times during 2018. In the first half of 2018, the Commission conducted 5 administrative meetings following regular Public Meetings. Beginning with the July Public Meeting, the Commission addressed non-public matters by closing the Public Meetings. No administrative meetings were held in the second half of 2018.

Major Objectives for 2019

The Commission will continue to focus on the management of its core programs, the financial disclosure system, the lobbying program and the outside employment approval process. The Commission has three priorities for 2019:

- 1) Implementing ethics law changes and new regulations.
- 2) Developing an online application process for outside employment of sworn police.
- 3) Assuring alignment with new County Executive and County Council initiatives, consistent with the Public Ethics Law.

The objective to implement changes to the ethics law and regulations involves both substantive program changes and educational initiatives to ensure County employees are aware of the changes that impact them.

One change to the ethics laws and regulations concerns outside employment of police, and the Ethics Commission, working with the Departments of Police and Technology Services seeks to implement an online application process for police that conforms with the existing online application processes for all other County employees, but includes the requirements of new Executive Regulations regarding outside employment of police as well. Annually, the Ethics Commission receives many hundreds of paper applications for outside employment from sworn police. These applications have conformed to police requirements established by its collective bargaining agreement with the police officer union rather than by ethics law. The new system will bring the police applications into conformity with ethics law provisions, will be easier to complete and submit, and will digitize application information which will reduce errors and eliminate duplicative manual data input operations at the Department of Police and at the Ethics Commission.

Another 2018 change to the County’s ethics law removed a requirement for employers of lobbyists to authorize by signature registration applications of lobbyists. The lobbying registration system is being changed to eliminate this requirement and also to allow lobbyists to pay for registrations online. As a consequence of these changes, the system will now allow for lobbyists to register and pay at one time, rather than executing a two-step registration process that required mailing executed documents and a check to the Ethics Commission.

The Ethics Commission executes the mandate of the ethics law and does so in the context of the structure of County governance. The Commission has the objective of continuing to independently execute its defined mission and to coordinate its mission fulfillment within the framework of governance of the County by newly elected and appointed officials. The Commission anticipates that the coordination may come in the form of ethics education, issuance of guidance and advisories, consideration of changes to ethics law and regulations, and through other media.

II. Status of Programs and Operations

Ethics program statistics:

Performance Measures	Actual 2016	Actual 2017	Actual 2018	Target 2019	Target 2020
Number of Issuances of Formal Opinions, Waivers, or Guidance	28	22	15	15	15
Number of Lobbyists Registered	262	270	172	172	172
Number of Lobbyist Activity Reports	372	405	259	259	259
Number of Financial Disclosure Statements for Calendar Year	1702	1768	1786	1786	1786
Number of Outside Employment Requests	1558	1045	882	882	882

This annual report summarizes the work of the Commission in each of the following areas:

- 1. Financial Disclosure**
- 2. Outside Employment**
- 3. Lobbying**
- 4. Complaints, Investigations and Hearings**
- 5. Advisory Opinions, Interpretation and Advice, and Waivers**
- 6. Education**
- 7. Legislative and Regulatory**
- 8. Outreach**
- 9. Administration**

1. Financial Disclosure:

The Public Ethics Law promotes the public's confidence in the integrity of County employees by requiring certain employees, including elected officials, to file financial disclosure reports that are required to be made publicly available. The reports detail financial holdings and relationships so that conflicts of interest between an employee's County duties and the employee's personal activities and interests can be identified and addressed. The Public Ethics Law requires filings of financial disclosure reports when individuals are first appointed to a filing position, annually thereafter, and when terminating from a filing position. The Commission prepares financial disclosure forms and makes them available electronically and maintains reports filed by employees; it currently administers the electronic filing system for reporting and coordinates with the Office of Human Resources and all County agencies regarding the status of filers. It also resolves all anomalous circumstances and questions associated with the filing of financial disclosure reports.

In 2015, major changes to the financial disclosure provisions in the Public Ethics Law were enacted. As a consequence, Ethics Commission staff, working closely with the Department of Technology Services, made significant changes to the online filing system to address the statutory changes for all filings made in calendar year 2016. Prior to calendar year 2017, the Financial Disclosure System was hosted on Windows 2003 web servers. In 2017, the financial disclosure system was overhauled and rebuilt on an ASP.NET application. This was a major undertaking for the Ethics Commission, for which a dedicated appropriation of \$180,000 was included in the Commission's FY 2017 budget. The system rebuild was led by the Department of Technology Service (DTS). The new system was launched December 28, 2017 and was utilized in connection with the roll-out of the requirement for public financial disclosure filers to file their 2017 annual financial disclosures by April 15, 2018.

It was an objective of the Ethics Commission that the roll-out of the new system be as seamless as possible. The FD was a complete system redesign, with DTS building a new platform for the system. The system had a few minor issues when first launched. For example, there was a problem with the copy data feature, but the problem was immediately corrected. Commission staff found that the amount of user questions decreased over prior years because of the ease of the new system. Aside from questions concerning what content is required to be included in a

form (a legal question under the ethics law), most calls about filing relate to access to the system, navigating the online form, and submitting the form. In 2018, these questions were substantially reduced due to the system being at the same time more intuitive and also facilitative by ensuring that required questions and processes are followed. The feedback received by Commission staff from filers was that the system was much easier to use.

The system changes did not materially alter the review process for financial disclosures.

The system now allows Commission staff to take certain actions that it previously had to go to DTS for. This includes changing the various letters and notices that go to employees from the system and to the online form itself. So, for example, when there was a legislative change regarding disclosure of home addresses in 2018, the Ethics Commission staff was able to make a form change on the new financial disclosure system platform instead of needing a coding change made to the form by DTS. This is a substantial benefit of the new platform the system is built on.

There were 1786 financial disclosure forms completed by County employees in 2018. Successful program administration is dependent on the accuracy of the database of employees and their status as filers. It is also dependent on the employees who file the forms and on County senior management who are the designated reviewers of forms. Lastly, it is dependent on County human resources liaisons and managers to follow-up with employees who have not filed and to obtain final reports from employees who are terminating from filing positions. Members of certain County boards, commissions, and committees, who are considered “public employees” for purposes of the public ethics law, are also required to file reports. As these persons are not normally tracked in the County’s personnel system, a separate system has been established to track the status of these persons.

With respect to full-time County employees, there was one hundred percent compliance with the requirement to file annual and final financial disclosure reports, as the County withholds the final paycheck of employees until a final disclosure statement has been filed. There are instances where the Commission is not notified of a filing employee’s departure from service, and the employee is paid without having filed a final disclosure. Due to notification and enforcement challenges associated with obtaining these reports, on occasion Commission staff treats the last filed report by the filer as a final report. This also occurs with some terminating board, commission, and committee volunteers who terminate service without filing a disclosure report after leaving County service.

Also of note regarding financial disclosure is that 2018 was an election year. As candidates for County Council and County Executive are required to file candidate financial disclosures with the Board of Elections, and ultimately the Ethics Commission, staff coordinated with the Board of Elections to ensure candidates were aware of their filing obligations. The Commission received 70 financial disclosures from candidates in 2018 and provided guidance to the Board of Elections and many candidates regarding the requirements for public financial disclosure.

2. Outside Employment: The Public Ethics Law requires that County employees obtain approval from the Commission prior to engaging in any employment other than County employment.

For employees other than sworn police, the Commission has an effective online system built by the Department of Technology Services for employees to make requests for outside employment. The system processes the requests for review by the employing department's management and the Ethics Commission. The Commission's staff prepares all requests for consideration by the Commission, to include obtaining additional information from requestors and County agencies and conducting preliminary legal analysis of requests. The Commission approves requests, as appropriate, setting conditions on approval as necessary to ensure compliance with ethics requirements, and staff notifies requestors by email of the disposition of requests by the Commission. The Commission publishes approved Outside Employment information required to be made publicly available by the Public Ethics Law.

The Commission approved 214 requests for outside employment in calendar year 2018 for employees other than sworn police. This compares to 303, in CY 2017, 568 in CY 2016, 262 approvals in CY 2015, 139 in CY14, 168 in CY 13 and 137 in CY 2012. The decrease in approvals resulted from fewer requests for outside employment in 2018; the Commission has no insight to this reduction in applications.

Outside employment approvals last for a maximum of three years. The Ethics Commission maintains a current list of outside employment approvals that it publishes online and which is also incorporated into dataMontgomery's publicly available information of all currently approved outside employment of County employees. Employees are notified both prior to and then after the expiration of their approvals. As 2018 ended the first three-year cycle of approvals, Commission staff is implementing a survey to examine whether persons with expired approvals are seeking new approvals when required.

The Outside Employment Online System (OEOS) allows for substantial benefits in program management as Commission staff has insight to all pending applications for outside employment. Previously, an employee filling out a paper application would submit the paper through the employee's chain of command and the Commission would have no notice or opportunity to ensure the process was operating effectively until it received the paper form after it had been processed by the employee's agency.

Currently, sworn police do not use the OEOS and instead use the form created by the Department of Police that conforms to the policies and practices developed by the Department. These police forms are then submitted to the Ethics Commission for processing and approval. In 2018, the Ethics Commission approved 474 new applications for sworn police outside employment and processed 194 renewals of outside employment for sworn police.

With respect to the review of the outside employment of sworn police, for many years the Ethics Commission has been challenged as the process and standards used by the Department of Police have been inconsistent with ethics law and regulations. In December of 2016, the Commission submitted a proposed regulation to the County Council that would have detached the Ethics

Commission from review of police outside employment requests altogether. That proposal was not acceptable to the Department or the County Council and was revised and resubmitted to the County Council on November 17, 2017. That subsequent proposal was amended and approved in July of 2018 after the Public Ethics Law was amended to permit certain outside employment practices of police and a new Executive Regulation governing outside employment of police was approved. In accordance with these changes in the legal landscape concerning outside employment of police, the processes and procedures and governing standards for approval of outside employment of sworn police will conform to requirements of the ethics law, and the Ethics Commission will continue to review the requests. The Department of Technology Services is currently working on incorporating the sworn police outside employment application process into the OEOS. We anticipate this system going live during 2019. The change to the law and regulations will be further discussed in the section concerning legislative and regulatory changes.

3. Lobbying: The Public Ethics Law requires persons meeting certain criteria and thresholds who communicate with County employees to register as lobbyists and to file semi-annual activity reports with the Commission. Annual registration fees are required and are paid to the Commission and processed and deposited into the General Fund.

Since CY 2013, lobbying registration and activity reporting has been effected through an online application developed by the Commission and the Department of Technology Services. The system has made registration easier for registrants, allowed data to be captured electronically rather than by manual processes of Commission staff, and promoted transparency for the public in accessing the online data.

These systems have resulted in almost instantaneous availability of lobbying information on the Ethics Commission's website.

<https://www2.montgomerycountymd.gov/Lobbyist/ActivityReport.aspx>

As a result of having implemented a lobbying filing system with reliable data sets, Commission staff has focused additional time on proactive steps to educate those who might meet registration thresholds in the Public Ethics Law to register as lobbyists.

As the system is easy to use, registering lobbyists' compliance with requirements is very high. For example, 100 percent of required semi-annual reports on lobbying activity for the last three years (including 2018) have been filed. This compliance rate is in stark contrast to the system in place prior to 2013 where compliance was irregular and there were no systems in place to measure compliance.

Since the online lobbying system was launched for calendar 2013, registration numbers have increased substantially. There was a downturn in total registrations for 2018 from 2017, though. The Commission has no explanation for this as processes for notification and handling of lobbying registrations did not materially change for the 2018 registrations. The total receipts for calendar year 2018 are \$20,500, down from \$30,625 in 2017 and \$35,125 in 2016.

For 2019, the Commission has implemented an online payment process, which should make registration easier. Also, the Commission has, pursuant to a change in the ethics law, been able to drop a requirement that employers of lobbyists sign the registration. This change will also facilitate the filing of lobbying registrations, as lobbyists will be able to complete all registration steps online and without having to mail completed registrations to the Commission.

4. Complaints, Investigations and Hearings: Pursuant to the Public Ethics Laws, the Commission receives complaints and, as appropriate: conducts investigations and hearings, makes findings, and imposes sanctions and penalties. During 2018, one formal complaint of an ethics violation was received. This complaint was dismissed by the Commission. Subsequently, the complainant appealed the Commission's dismissal to the Circuit Court. The Circuit Court granted Montgomery County's Motion to Dismiss the appeal. The matter has been subsequently appealed to the Maryland Court of Special Appeals.

In connection with this matter, the Commission sought and obtained approval from the County Council to hire outside counsel and to pay up to \$20,000 for the outside counsel. Montgomery County is represented by separate counsel with respect to the matter.

There were no pending formal complaints at the close of 2018.

Aside from formal complaints, many issues were brought to the attention of the Ethics Commission during 2018 including several "complaints" that did not meet the criteria for filing a formal complaint under the Public Ethics Law. Matters that do not raise issues within the jurisdiction of the Commission are closed or referred to a more appropriate office for disposition. Others are brought to the attention of the Commission and considered and addressed by the Commission. When appropriate, matters are coordinated with the County Attorney, the relevant County agency or the Inspector General. The Commission is authorized to conduct investigations on its own initiative and to bring complaints. At the end of 2018, the Commission had no pending investigations or complaints.

5. Advisory Opinions, Interpretation and Advice, and Waivers: The Ethics Commission is expressly authorized to interpret the Public Ethics Law and advise persons as to its application. It does this proactively or in response to or as a result of formal or informal inquiries. Commission staff receives a substantial number of informal inquiries from County employees and from members of the public. These questions relate to each of the programs operated by the Commission and with respect to the overall mandate of the Commission under the ethics law.

The Commission is authorized to publish advisory opinions and grant waivers of ethics law requirements, as appropriate. The Commission is required to publish its advisory opinions, or, in the event an opinion is not published, state the reasons for not publishing the opinion.

The Commission published two advisory opinions during calendar year 2018, the full text of which can be found at:

<https://www.montgomerycountymd.gov/Ethics/Decisions/Opinions/2018.html>

The Ethics Commission issued 13 waivers, which are published at:

<https://www.montgomerycountymd.gov/Ethics/Decisions/waivers/2018.html>

Summaries of the opinions, waivers and guidance appear below. The decisions made were limited to the facts presented and no assumption should be made to the application of the opinion to any other circumstances.

Advisory Opinion 18-01-0014

The Ethics Commission considered and denied requests for waivers submitted by a Montgomery County Fire and Rescue Service (MCFRS) Captain and a Master Firefighter who worked under the purview and at the same fire station. The denial was written up as an advisory opinion as provided for in 19A-8(g) of the ethics law.

The Ethics Commission regulation at COMCOR 19A.06.02.04.3 provides that a County employee is “prohibited from working for any person(s) or entity in which an economic interest is held by a person(s) the county employee supervises or who supervises the County employee as part of their county employment.” Here, the Captain submitted an outside employment request for his own outside business enterprise and the Master Firefighter submitted an outside employment request to work for the Captain in the outside business. The Fire Chief supported the requests of the Captain and the Master Firefighter for a waiver of the ethics restriction.

The restriction on employees who are in a supervisor/supervisee relationship working together in a business enterprise outside County service concerns the potential for and appearance of inappropriate conduct. This conduct could, in theory include: favoritism or an appearance of favoritism in the County workplace or elsewhere; advantage due to relative stations in County office, where a supervisor gains the benefit of the subordinate’s services in the outside business as a result of the inherent leverage of the supervisor’s official position in the County service; the possibility of a County employee who is subordinate to another, seeking to gain favor of a superior by engaging in outside services for the superior; and the inappropriate circumstance where a County subordinate, as a superior to his County supervisor in an outside business, is able to use the status and leverage of that relationship for gain or the appearance of gain in County employment. These are the types of concerns that are intended to be addressed by the restriction: the opportunity for and appearance of favoritism or misconduct involving County employees in a supervisor-supervisee relationship when they engage in outside business together.

Neither the request for a waiver from the Captain nor from the Master Firefighter provided any facts that provide assurance regarding the fundamental rationale for the regulatory provision. The requests for waiver of the ethics restriction submitted by the Captain and the Master Firefighter both stated that there was no “actual conflict of interest.” The Captain’s request proceeded on the theory that there is no conflict due to the limited amount of control the Captain exercised over the activities of the Master Firefighter. The waiver request of the Captain stated that he has “no direct control or influence over [the Master Firefighter’s] salary, overtime,

benefits, leave, assignment, evaluations, or ability to transfer. . . . As such, I would not compromise my official duties by virtue of an outside business relationship.” The Captain’s request stated that he has “no direct control” but he did “manage the day to day operations of the fire station and the personnel there.” The Master Firefighter’s request for a waiver referred to the Captain as being the “direct supervisor” of the Master Firefighter.

The Commission concluded the facts presented in the requests for waivers do not establish that there is such a separation between the roles and responsibilities of the Captain and the Master Firefighter that the rationale for the regulatory provision is negated or that the facts support that no “actual conflict” exists.

The Commission noted that the action of signing off by the Captain on the Master Firefighter’s request itself reflected a lack of sensitivity to ethics requirements. When the Captain acted on the request as a supervisor, he was taking government action that advanced the interests of and specifically related to his outside business, an action which runs counter to ethics principles and law. Accordingly, the requests for a waiver were denied by the Ethics Commission.

Advisory Opinion 18-10-014

This advisory opinion concerned the attendance of members of the Board of Investment Trustees (“the Board”) at meetings hosted by third parties and the acceptance of meals, beverages, and other expenses in connection with the meetings.

The first issue addressed whether the County’s prohibitions concerning gifts apply when a Board member attends a meeting or event as a representative of his/her outside employer or affiliate rather than as a representative of the Board, and receives meals, beverages and other expenses from the host of the event where the host also does business with the Board.

The Public Ethics Law at 19A-16(c) prohibits public employees from “knowingly accept[ing] a direct or indirect gift from a restricted donor.” A restricted donor is, pursuant to 19A-4(o), a person or business that does business with the County agency with which the public employee is affiliated or has a financial interest that may be substantially and materially affected in a manner distinguishable from the public generally by the performance or nonperformance of the public employee’s duties. The scenario presumes the host does business with the Board and is a restricted donor for purposes of the gift restriction. Whether 19A-16(c) applies is a function of whether a public employee is the recipient of and “accepts” the gift. If the gift is accepted by the public employee, the 19A-16(c) prohibition applies, and the gift may not be accepted unless an exception applies under 19A-16(d).

On the other hand, if the gift of meals, beverages, and other expenses is not accepted by the public employee, but instead is accepted by the public employee’s outside employer, then, in theory, 19A-16(c) would not apply. The Ethics Commission believes a gift is accepted by the outside employer and the prohibition of 19A-16(c) would not be implicated where reasonable expenses for food, travel, lodging, and scheduled entertainment have not been offered or enhanced because of the employee’s County position and either (a) the invitation is made to the

outside employer and the employee is formally designated (by a writing in advance) to attend the event for the outside employer or (b) there is otherwise a formalized review process in advance of the event where the outside employer makes the determination to “accept” the gift.

A second issue concerned the Executive Director of the Montgomery County Employee Retirement Plans (MCERP)’s attendance at meetings or conferences hosted by a restricted donor as a trustee of the State Pension Board and not as the MCERP Executive Director. Specifically, can the Executive Director accept a gift of a meal and beverages from a restricted donor of the County MCERP when attending on behalf of the State Pension Board?

The scenario presumed that the gift is acceptable under the State Ethics Law because if the State’s Public Ethics Law prohibits the gift, the question is moot; the gift could not be legally accepted. There is little variance between the State’s ethics law and the County’s. Fundamentally, if a gift is acceptable pursuant to the State’s ethics law, it is likely to be acceptable under the County’s law. One relevant difference concerns meals and beverages. With respect to functions involving fewer than 20 persons, the County imposes \$50 cap per year per restricted source while the State has no dollar cap on meals and beverages consumed in the presence of the donor. The Commission considered this situation to be fundamentally equivalent to the first scenario. A gift will be deemed accepted by the State Pension Board if the gift is for reasonable expenses for food, travel, lodging, and scheduled entertainment where it is clear that such benefits have not been offered or enhanced because of the employee’s County position and either (a) the invitation is made to the State Board and the employee is formally designated (by a writing) to attend the event for the State Board or (b) there is a formalized review process in advance of the event where the State Board makes the determination to “accept” the gift.

The opinion further addressed accepting gifts from investment limited partnerships the Montgomery County Employees’ Retirement System (ERS) and Montgomery County Consolidated Retiree Health Benefits Trust (CRHBT) are invested in. The ERS and CRHBT invest as limited partners (LPs) in private limited partnerships, with each being run by a Private Fund. Generally, the Limited Partnership Agreement (LPA) between the Private Fund and its LPs requires that partnership expenses be paid for by the Private Fund, and that LPs such as the ERS and CRHBT contribute their share of partnership expenses to the Private Fund.

The partnership expenses outlined in a standard LPA typically include expenses of annual LP meetings of the Private Fund which all LPs may attend. As LP representatives of the ERS and CRHBT, Board members and Staff may receive meals and beverages from the Private Fund or its manager while attending an annual LP meeting. 1. Assuming the LPA requires that expenses of annual LP meetings to be treated as partnership expenses and that the Private Fund is to host the annual LP meeting, the question was whether meals and beverages received by a Board member or Staff at such an annual LP meeting pursuant to the LPA should be considered a gift.

The Commission decided the answer to this is no. Something that has been paid for by the County is not a “gift.” Pursuant to the definitions in the Public Ethics Law, “gift” is defined as “the transfer of anything of economic value . . . without an exchange of consideration of at least equal value.” 19A-4(h). If meals and beverages are obtained by government contract, inclusive

of a partnership agreement, then there has been consideration for what is transferred in an amount that is intended to be equal value.

The Commission noted that County employees are not free to, in their official capacities, enter contracts that are designed to confer benefits on the County employees themselves. To do so could offend prohibitions on use of public office for private gain incorporated into the ethics law. In addition, were a benefit to an employee arranged with a private entity that exceeds what would constitute a necessary expense for the County, such might be inconsistent with State and County law limiting the spending of County funds for necessary expenses. In an extreme case, such expenses could be considered waste, fraud or abuse, or even constitute a kickback under 11A-51 of the County Code.

The opinion also addressed whether meals and beverages received at an annual LP meeting would be regarded as part of the service the Board contracted for under the LPA, rather than as a gift, where costs are treated as a partnership expense paid for by the Private Fund but the LPA does not specifically require the Private Fund to host an annual LP meeting. The Commission decided that this would be a gift from the Private Fund rather than something conferred by the County on its representatives.

Where a contract does not expressly provide for the expenditure of funds that would allow the conferring of a benefit on a public employee, then the check on the legality of the arrangement would be absent. Were the answer to be different, any County contractor – LP or otherwise – could present gifts to County employees and, as long as the expense was charged back to the contract, claim that the expense was being born by the County and that there was no gift.

When the County is not the entity that is making the decision to confer a benefit (which is what happens when the contract does not expressly provide for the benefit to be conferred), it is the Private Fund manager that makes that decision, and the manager is really the one who is incentivized to influence public employees to the manager's advantage, such as to encourage the County to maintain investment in the LP, increase investment in the LP, or to invest in other LPs managed by the Private Fund.

The Commission noted that as the scenario posed concerns meals and beverages, there is a substantial likelihood the gifts would qualify for the meals and beverages exception in the gift law if more than 20 persons would be present and would consume the meals and beverages in the presence of the restricted donor.

Waivers.

The Ethics Commission issued 13 waivers in 2018.

Nine of the waivers related to outside employment activities that were found not to create an actual conflict of interest. A public employee must not, pursuant to § 19A-12(b)(1)(B) of the Public Ethics Law, be employed by a business that negotiates or contracts with the County agency with which the public employee is affiliated, unless the Ethics Commission grants a

waiver. Many employees are notified of the prohibition after they have submitted a request for outside employment, and it has been reviewed by management or the Ethics Commission. Eight of the waivers issued concerned § 19A-12(b)(1)(B) of the ethics law. One of the waivers concerned § 19A-12(b)(1)(A), which prohibits being employed by an entity regulated by the employee's County agency.

These outside employment waiver applications are granted where there is no relationship between the conduct of the employee's County duties, the duties performed in the outside position, and the contract between the County and the outside employer. In short, they are approved where there is no actual conflict of interest. These requests are not discussed in detail and can be reviewed in full at the link on page 9.

The Ethics Commission issued two waivers of § 19A-11 for employees to work on matters related to Amazon.com, Inc.'s consideration of locating a headquarters in Montgomery County notwithstanding the employees' interests in Amazon stock. (See **Waivers 18-03-005 and 18-04-009**.) The rationale for each of these waivers was the same. The Commission found that given the scope of Amazon's overall business enterprise and the limited nature of the employees' interests, the risk of County employees' actions having any effect on the stock holdings was negligible. If, in the unlikely event there was some effect, the effect would be unpredictable. The Commission indicated its belief that no reasonable person could question either of the employees' impartiality or objectivity because of the interest in a few Amazon shares. The Commission found that the importance of the employees' participation in the matter far outweighed the very remote and limited potential harm of any conflict of interest. Also, the Commission could see no unfair economic advantage that the employees would obtain over other public employees or members of the public as a result of its granting the waivers.

Two other waivers concerned the application of one of the County's post-employment restrictions.

Waiver 18-03-007

Pursuant to § 19A-13(b) of the 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 with any person or business if the public employee significantly participated during the previous three years in regulating the person or business, or in any procurement or other contractual activity concerning a contract with the person or business, unless the Ethics Commission grants a waiver of the restriction.

The first waiver concerned the post-employment opportunities of the Chief, Aging and Disability Services, DHHS, who had been appointed to the "Question A" position in 1995.

DHHS had a number of contracts with the potential employer. The total amount of funds provided to the potential employer through Aging and Disability Services was just under \$500,000. This amount is less than two percent of the overall funding to contractors (approximately \$26,600,000) the employee approved in his position as Chief, Aging and Disability Services.

The employee's role was to set the strategic direction for his service area, identify programs or pieces of work that should be contracted out, and approve contract actions as being in line with that strategic direction. The employee did not serve on the Quality and Selections Committee (QSC) for any contracts and was not involved in contract negotiations. Moreover, the employee was not the signatory on the contracts for DHHS. As Chief, Aging and Disability Services, the employee had interacted with and approved funding for virtually every nonprofit and organization that serves older adults, individuals with disabilities and caregivers in Montgomery County (approximately 80 organizations).

The position with the potential outside employer would involve the development, administration, and coordination of all existing and new programs activities. This responsibility would entail high-level oversight of the performance of approximately 200 employees and a budget of approximately \$40,000,000. County funding from the employee's division within Aging and Disability Services (County Executive and Council grants, open solicitations and competitively awarded contracts) represents approximately 1.2 percent of the potential employer's total operating budget. It was anticipated that the potential prospective employer would continue to seek County Executive and Council grants and bid for funding under open solicitations and competitive RFP processes involving the Aging and Disability Services division.

Here, the total amount of funds issued by the County to the potential employer that the employee had approved in his role as Chief, Aging and Disability Services, while not insignificant -- is a very small percentage of funds the employee had approved in his County position. Further, the funds are also a small portion of potential employer's total annual budget.

The Commission found the employee would not have an actual conflict of interest if employed by the outside employer after terminating service with the County.

The Commission made its finding conditional on the employee: (a) not working while still a public employee on any matter affecting the potential employer in a way that is distinct from the effect on the public generally; (b) not working while still a public employee on any matter where the potential employer is a party to the matter; (c) not sharing with the potential employer while employed by the County or otherwise, confidential County information; (d) not ever working on, if ultimately employed at the potential employer, any case, contract or other specific matter that the employee significantly participated in while an employee of the County; and (e) not making any communication or appearance before DHHS on behalf of the outside employer in connection with any matter for one year after terminating County service.

The Ethics Commission noted the wide reach of the Department across the organizations that serve the aging and disability communities and that the imposition of the bar of 19A-13(b) would mean that the employee would effectively be barred from serving in his chosen field inside the County for one year. The County's ability to hire and/or retain qualified public employees (specifically "Question A" political appointees) would be greatly reduced if public sector employment precludes the ability to work in one's professional field of specialization with any/all private entities performing similar services in the County. In reaching the decision, the Commission relied upon the facts as presented by the requester.

Waiver 18-11-015

The former Director, Montgomery County Department of Health and Human Services (DHHS) was appointed by County Executive Isiah Leggett in February 2007, and left County service on December 1, 2018. The former Director advised the Commission of a possibility of a consulting arrangement with a national membership association for public sector human service agencies and with a non-profit focused on children and families. DHHS pays dues to the association, participates in the association's conferences and webinars, serves on association taskforces, and receives the association newsletter. The former Director has been in various uncompensated, policy leadership positions with the association as part of her official position with the County. The nonprofit focused on children and families expends resources to provide technical assistance to support the County's child welfare practice. As Director of DHHS, the former employee worked with both of the organizations and has supported DHHS's work with them.

Section 19A-8(c) states that the Ethics Commission may grant a waiver of 19A-13(b) if the Commission concludes that failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees or if the proposed employment is not likely to create an actual conflict of interest.

The Commission found that the County's ability to hire and/or retain qualified public employees including political appointees would be greatly reduced if public sector employment at a senior level precludes the ability to work in one's professional field of specialization with all private entities dealt with during the course of County employment. The Commission recognizes that these circumstances must be weighed against the purposes for which the statutory prohibition is created, which relate to both appearances of and real conflicts of interest of government employees whose official actions involve private entities that are potential employers when an employee leaves County service.

Given the nature of the organizations for which the waiver is sought, the nature of the relationships the organizations have with DHHS, and the involvement of the former Director with these organizations as described in the request for a waiver, the Ethics Commission granted a waiver to the former Director of the prohibition of 19A-13(b) with respect to possible consulting opportunities with the two organizations after leaving County service. The waiver was conditioned on the former Director not being involved in services or work with Montgomery County for these entities for one year from the date of her departure from County service. In reaching the decision, the Commission relied upon the facts presented by former Director.

6. Education: The Commission conducts public education and other information programs regarding the Ethics Law. Commission staff routinely provides individual instruction on filling out and review of financial disclosure forms, outside employment requests and lobbying reports, and other matters falling within its jurisdiction.

Ethics Commission staff participated in biweekly orientation sessions for all new County employees. This activity, conducted since April of 2014, has resulted in several hundred new County employees receiving basic information about their responsibilities under the County's ethics law each year.

Mandatory ethics training for executive branch public financial disclosure filers was announced April 26, 2017, through an email by Fariba Kassiri, Assistant Chief Administrative Officer. The Office of Human Resources Training and Organizational Development Division provided support in the implementation of this County-wide training compliance initiative.

In 2018, Commission staff conducted 7 one-hour sessions, 6 in the OHR training room, and one at public safety headquarters. As the program was rolled out in 2017, most of the persons who were required to take the mandatory training took it in 2017. The bulk of persons attending training in 2018 were persons who either were new employee public financial disclosure filers or County employees who have been promoted into positions that require a public financial disclosure.

The original number of persons in the target group of employees (executive branch financial disclosure filers) was 1266 employees. The exact number is variable as it increases when new public filers come on board and decreases when individual employees (who had not yet been trained) depart from service. As of the end of 2018, 1450 persons had attended the mandatory training since May of 2017. The number of persons attending the mandatory training was 190 in 2018. A total of 10 persons of the original 1266 have yet to take the training. There are also 8 persons who are new employees or newly required to take the training who have not taken the training during the 6-month period those employees were required to take the training. Thus, a total of 18 employees are noncompliant with the training requirement.

In addition to the training being monitored through OHR's learning management system, the Ethics Commission is tracking compliance and notifying, with the help of HR liaisons, those who have yet to take the training. Commission staff is not allowing persons who show up for training more than 10 minutes late to enter the training sessions and Commission staff tries not to extend credit to those who miss a substantial portion of a session, such as those who leave early to address other business. Where the Commission is able to identify such employees, the employee is notified that they are not receiving credit and are informed that they may attend the portion of the session that they missed. In short, the Commission staff is treating the training as a compliance program.

The Commission will continue the program as follows:

- The Commission will notify new executive branch employees entering filing positions of their obligation to take the training within 6 months of the date the employee began in an executive branch public filing position.
- The Ethics Commission will conduct monthly or as needed training sessions in either a human resources training facility or at another suitable location. This training is intended to cover those who have yet to take the training, the new filers, and any other persons who want to take ethics training.

- Those who have taken the training will be notified 90 days before the end of their 3-year training cycle of the need to take the training again. These notices will begin on a rolling basis in February 2020 for those persons who took the training in 2017.
- The Chief Administrative Officer's office will be notified periodically (not less than annually) of those persons who are required to take the training but have not and any who have failed to take the training within the required timeframe. In instances where there is systemic failure of an agency's employees to take the training, the agency director will be notified of the issue.

In addition to those training activities, Commission staff provided additional ethics education at the annual meetings of Boards, Commissions, and Committees with the County Executive in April 2018. Commission staff also conducted a two-hour training with Council staff and two Council members as part of the Council orientation program in December 2018.

7. Legislative and Regulatory: The Commission recommends and prepares new ethics legislation and regulations.

In October of 2017, the Ethics Commission was notified by the State Ethics Commission of changes to State ethics law, with instructions to local jurisdictions to enact conforming local law.

In November 2017, the Ethics Commission submitted to the County Council recommended changes to the County's ethics law to address the issues identified by the State Ethics Commission. This proposal was described in the 2017 annual report.

In April 2018, the proposed legislation was passed as amended. Most of the proposals recommended by the Commission were adopted. One provision concerning post-employment lobbying by elected officials was narrowed to conform with the requirement added to the State law.

In addition, the ethics law was additionally amended as a result of discussions about outside employment of sworn police. In particular, 19A-11 now makes clear that an officer who exercises police authority during approved outside employment does not violate that conflict of interest provision; the outside employment provision, 19A-12, was amended to make clear that sworn police could engage in outside employment in the police district to which they are assigned.

The Council packet addressing this legislation can be found at https://www.montgomerycountymd.gov/council/resources/files/lms/bill/2018/Action/pdf/5764_1494_Action_04162018.pdf

Regulations Submitted to Council for Approval

The Ethics Commission submitted proposed regulations to the County Council on December 16, 2016. These regulations proposed policies and procedures for addressing violations of the Public Ethics Law; policies and procedures for requesting approval for outside employment; guidance concerning misuse of prestige of office and improper influence; guidance on gift acceptance; and ranges of value for financial disclosure by elected officials. The proposed regulations had been published in the County register in September 2016, and County employees had been notified of the opportunity to comment on the proposed regulations.

After receiving the perspective of Council staff and in further reflection on comments received to the proposed regulations, the Commission revised the proposed regulations, particularly with respect to the treatment of outside employment for sworn police. In the 2016 version of the regulation, sworn police were excluded from coverage of the regulation and particular provisions applicable only to sworn police were removed. The effect of this would have been to exclude sworn officers from the outside employment approval process required of all public employees pursuant to the Public Ethics Law. The proposed regulation was revised and republished in June of 2017 in the County register, with sworn police added back into the coverage of the outside employment requirements under the purview of the Commission.

The Ethics Commission sent a revised proposal to the County Council on November 17, 2017. The memorandum supporting the proposal detailed the Commission's concerns regarding outside employment of sworn police. From the Ethics Commission's perspective, many of the allowances provided for by the County's collective bargaining agreement ("CBA") with the Fraternal Order of Police ("FOP") in connection with outside employment were inconsistent with the County's ethics laws and the notion that employees may not use County equipment or the prestige of office for private gain; the notion that the application of the County's ethics law had been treated as negotiable under the collective bargaining process was itself remarkable. Police use County equipment and uniform in outside employment activities and otherwise perform services, such as security services, which inevitably result in contacts between officers while working in outside jobs and the Police Department. Typically, the application of the ethics law results in distancing an employee's personal activities from an employee's agency jurisdiction.

The changes to 19A-11 of the ethics law made clear that the County Council wanted sworn police to be able to engage in outside employment wearing County uniform and with the authority to deploy official authority while performing services for outside employers. The change to 19A-12 made clear that the County Council wanted sworn police to be able to have outside employment in the district where the police were assigned – to have employment with the entities subject to the exercise of the officer's official authority while on duty. Accordingly, the concerns raised by the Ethics Commission that the practices engaged in by police in outside employment were fundamentally inconsistent with the ethics law were addressed by law changes.

The proposed regulation was amended as to sworn police to state that police officers could use County equipment, uniforms, and cars as expressly authorized by regulation. The structure and intent of the conflict of interest law and ethics regulations as regards police outside employment

is that if action is expressly authorized by regulation, that action will not violate the ethics law. In tandem with and pursuant to this structure, the Council approved a new Executive Regulation concerning outside employment of police at the same time it approved the new Ethics Regulation; this was the same date Bill 2-18 with the ethics law changes became effective, July 24, 2018.

The Council packet involving consideration of the Ethics Regulation can be found at http://montgomerycountymd.granicus.com/DocumentViewer.php?file=montgomerycountymd_93efdc5e112ddf686f96901655a2a590.pdf

Thus, a long-standing issue for the Ethics Commission was resolved. The remaining step is to implement the requirement that sworn police do what every other County employee is required to do - which is go online and fill out the form with the questions required to be answered by the Ethics Commission. The Commission expects that Police Department practices regarding outside employment, including the filling out of the current forms used by the Department, will continue until the online process is in place for sworn officers.

8. Outreach and Other Activities: The Staff also serves as the principal public resource on the County's ethics laws, to include managing a website that reflects Commission programs, activities, and publications such as annual reports, approvals of outside employment requests, lobbying data, and waivers and opinions.

9. Administration: The Staff of the Commission is responsible for assuring that Commission meetings are run in accordance with the Open Meetings Act and other applicable law. The Staff informs and advises the Commission as to all material matters under its jurisdiction; Commission staff are also responsible for budget, procurement, human resources, and resource management for the operation of the office in accordance with Montgomery County policies, and attends required training in these and other office management areas.

For the Commission:

Respectfully Submitted,



Rahul Goel, Chair

February 28, 2019

Date