



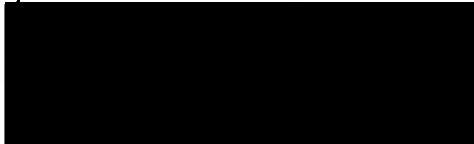
THE PRINCE GEORGE'S COUNTY GOVERNMENT BOARD OF ETHICS

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County Executive

Robin Barnes-Shell
Executive Director

The Honorable Covette Rooney, Chair
Cassandra Burckhalter, Member
Curtis Eugene, Member
Anne Magner, Esq., Member
Sharon Theodore-Lewis, Esq., Member

April 24, 2015



RE: Advisory Opinion 15-0130

Dear [REDACTED],

On December 6, 2013, the Board of Ethics (the "Board") reviewed a request from a former employee of the Prince George's County Department of Environment (DOE) to waive §2-293(2)(A) of the Ethics Code to permit the former employee to work on a contract between the County and her new employer.¹ The Board considered the facts and concluded that the former employee was prohibited from working on the contract because of [REDACTED] participation in the matter while employed with the County. The former employee has asked the Board to reconsider its decision in light of the former employee's length of separation from County service. For the following reasons, we advise that the former employee is permanently barred from participating in any activities or projects related to, or stemming from, the contract between her former agency and her new employer:

Section 2-293(b)(2)(A) states that except for former members of the County Council, a former official or employee may not assist or represent any party other than the County for compensation in a case, contract, or other specific matter involving the County if that matter is one in which he significantly participated as an official or employee. There is no time limitation to this prohibition. Up until 2012, the Board had the authority to determine whether sufficient time had elapsed or circumstances had sufficiently changed such that the effect of prior significant participation was no longer present. The Board could consider, after the passage of 18 months, whether to waive the post-employment restrictions placed on officials and employees. However, after §2-293 was amended in 2012 to comply with State law, that authority was repealed.² The County's post-employment language in the Ethics Code must be similar to the State.³

¹ DOE was reorganized and renamed in 2014. Prior to 2014, DOE was formerly known as the Department of Environmental Resources (DER).

² See CB-36-2012.

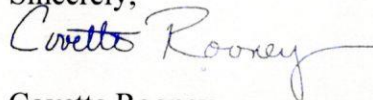
³ See Md. Code Ann. GP. § 5-808 (2014).

Applying the law to the facts of the instant case, we note again several points. First, the former employee works for a company that is a party to a contract with the County. As an employee of a party to a contract with the County, the former employee may be providing services to the County, but her duty of loyalty lies with her company. The relationship between the former employee's company and the County is one of a contractual nature and not a fiduciary one. Secondly, while with the County in 2011, the former employee served as a voting member on a proposal analysis group (PAG) that evaluated, and ultimately selected, her new employer to provide engineering services on County flood control projects.⁴ The recommendation of a PAG member is instrumental to the awarding of a contract. Because we view this type of participation in a County matter to be significant, and any work on the flood control contract awarded from her participation on the PAG as flowing from the PAG's decision, the former employee is disqualified from participating in any action which affects the projects in question. This prohibition is a lifetime ban.

The Ethics Code is not only concerned with actual conflicts of interest but also with "even the appearance of improper influence."⁵ The philosophical basis of the [post-employment] restriction is to avoid the appearance of 'switching sides' in a particular matter and using special knowledge acquired in the context of one's [County] employment for the benefit of a party other than the [County]. Another goal is to avoid situations in which an individual may be seen to be using a [County] position to create a private employment opportunity.⁶ Whether any of this is indeed the case we do not opine. It is enough that it may be perceived.

For the reasons stated above, the Board advises the former employee is prohibited from working on the contract in which she was a voting member of the PAG. As discussed in the prior opinion, the former employee is not prohibited from working on matters she did not significantly participate in while employed with the County.

Sincerely,

A handwritten signature in blue ink that reads "Covette Rooney". The signature is fluid and cursive, with the first name "Covette" and last name "Rooney" clearly legible.

Covette Rooney
Board Chair

⁴ A PAG is an issue specific group which is responsible for the defining and drafting of Requests for Proposals (RFPs), soliciting responses, evaluating responses, and recommending the top three evaluated providers to the Director of Central Services, as Purchasing Agent, for contracts for which competitive bidding is inappropriate. Prince George's County Code § 10A-101(a)(32).

⁵ See Prince George's County Code § 2-290.

⁶ COMAR 97-11 (2015) (emphasis added).