



**THE PRINCE GEORGE'S COUNTY GOVERNMENT
OFFICE OF LAW**

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Date: October 11, 2013

To: [REDACTED]

From: Stephen M. LeGendre, Associate County Attorney *SML*

RE: Your request of September 26, 2013 for Determination of Conflict of Interest

You have requested advice regarding the application of County Code of Ethics Section 2-293 to the facts set forth in your Memorandum dated September 26, 2013 (Attachment A).

To summarize, you received advice from this office dated May 1, 2013 that the engagement of [REDACTED], while you served as a member of its Board of Directors, to train Office of Central Services (OCS) staff presented a conflict of interest. You inquire: (1) whether the prohibition extends beyond the end of your term (December, 2013) as a board director; and (2) whether the same prohibition would apply to a new appointee to the board from OCS staff.

Applicable Code Sections

Section 2- 291. Definitions.

(a) The words used in this Division shall have their normal accepted meanings except as set forth below:

... (4.2). **Employee** means an individual who is employed by the County. Employee does not include an elected local official. Employee does not include an employee of:

- (A) The offices of the Sheriff, State's Attorney, Register of Wills, or Clerk of the Court;
- (B) The County Health Department; or
- (C) The County Department of Social Services.
- (C) Being registered as a lobbyist in accordance with Section 2-295 of this Division.

Sec. 2-293. Prohibited conduct and interests.

(a) Participation Prohibitions. Except as permitted by Board regulations or opinion, an official or employee may not participate in:

... (2) Any matter, except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to the matter, when any of the following is a party thereto:

... (B) Any business entity of which he is an officer, director, trustee, partner, or employee, or in which any of the above-listed relatives has this interest; ...

(b) Employment Restrictions.

... (2) Post-employment limitations and restrictions.

(A) With the exception of 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.

(B) Until the conclusion of the next regular session that begins after the elected official leaves office, a former member of the County Council may not assist or represent another party for compensation in a matter that is the subject of legislative action.

Analysis

(1) Does the prohibition in Section 2-293 (a) (2) (B) extend beyond the end of your term (December 2013) as a board director?

Section 2-293 (b) (2) sets forth limitations and restrictions for employees after separation from employment but there are no limitations or restrictions following the end of the term of an officer or director of a business entity. That is, the County Council clearly expressed a limitation and restriction in the post-employment situation but remained silent for the post-directorship situation.

The cardinal rule of statutory interpretation is to give effect to the legislative intent. And in a case where the language is clear and unambiguous, there is no need to resort to rules of construction. But in a case of ambiguity, among the rules of construction, the expression of one thing is the exclusion of another. Clifford S. Walzer, et al. v. Keith J. Osborne, 395 Md. 563 (2006).

In this case, the Board of Ethics finds that there is no legislative intent to set a limitation or restriction following the end of your term as a board member. This is the case even under the liberal construction afforded to the Code of Ethics. But should there be any doubt about the clear and unambiguous language, it is put to rest by the application of the rule that the expression of

one thing excludes another. As noted, the Code of Ethics has an express post-employment restriction for employees, but is silent on restrictions following the end of your term as a board member.

(2) Does the prohibition in Section 2-293 (a) (2) (b) apply to a new appointee to the Board from the OCS staff?

Section 2-293 (a) (2) (b) applies to all employees, defined in Section 2-291 (a) (4.2) as "an individual who is employed by the County." Accordingly, the same prohibition that applies to you during your term as a member of the Board of Directors would apply to a new appointee to the board from OCS staff.

Please be aware that this advice is based on the facts and representations that you included in your request, and is conditioned upon those facts and representations. You may, of course, request an advisory opinion from the Prince George's County Board of Ethics pursuant to Sections 292 (b) and 292 (h).

Attachment A



PRINCE GEORGE'S COUNTY GOVERNMENT
Office of Central Services

Rushern L. Baker, III.
County Executive

Monica J. Johnson
Director

Floyd E. Holt
Deputy Director

Stephanie P. Anderson
Deputy Director

MEMORANDUM

TO: Robin Barnes-Shell, Acting Executive Director
Office of Ethics and Accountability

FROM: Monica J. Johnson, Director
Office of Central Services

DATE: September 26, 2013

RE: Request for Ethics Opinion – Training Source, Inc.

I am a member of the board of directors for the Training Source, Inc., a nonprofit organization that provides job and career development training services. My term with the organization expires December 2013. The organization has received grant funding from the County in the past and has provided training for employees at various agencies within the Prince George's County Government.

Our Human Resources staff has been in contact with the organization and believes the Training Source can provide comprehensive skills training for the Office of Central Services (OCS) employees. Since I am the Director of OCS, the County Purchasing Agent and Training Source Board Member (non-paid/voluntary position), I would like an opinion from the Office of Ethics and Accountability on whether or not engaging the Training Source to provide employee training for OCS staff would be a conflict of interest and violation of the Ethics Code.

On May 1, 2013, I received an opinion from the Board of Ethics indicating that there is a conflict for me to serve on the Training Source Board of Directors and to have the organization provide training to OCS staff (see attached). I concur with the Board's opinion.

"One Mission – One Team"

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Robin Barnes-Shell
September 26, 2013

My specific question today, is given the fact my term expires in December 2013, would it still be a conflict for OCS to hire the Training Source to provide training after that date. In other words is there a requirement for some "cooling off" period before we engage the Training Source or has my membership on the Board permanently precluded the agency from retaining the Training Source as long as I am the Director of OCS.

In addition, I would like to know whether any other members of the OCS Management team serving on the Training Source Board of Directors would preclude the agency from doing business with the organization. There are currently no other members of the OCS Management team on the Board, my inquiry is for planning purposes only.

Should you require additional information, please feel free to contact me at (301) 883-6450.

Attachment