



THE PRINCE GEORGE'S COUNTY GOVERNMENT BOARD OF ETHICS

Rushern L. Baker
County Executive

Robin Barnes-Shell
Executive Director

The Honorable Covette Rooney, Chair
Cassandra Burckhalter, Member
Anne Magner, Esq., Member
Addie Martin, Member
Norris Sydnor, Member

BOARD ADVISORY OPINION

May 29, 2014

[REDACTED]
[REDACTED]
[REDACTED]

Re: [REDACTED]

Dear [REDACTED],

You requested an advisory opinion from the Board of Ethics regarding any potential conflicts arising out of your previous employment as Deputy Director of the Prince George's County [REDACTED]. Your request indicates that during your tenure, you were involved with contracts and procurement as well as supplier development and diversity, including implementation of legislative initiatives. You could sign off on purchase orders, approve non-competitive contracts, and in the absence of the Director you could approve other bids, but you indicated this was on a limited basis. You also indicated that you reviewed construction contracts that involved [REDACTED].

It is our understanding that your request pertains to the effect of Prince George's County Code Section 2-293 Prohibited conduct, subsection (b)(2)(A) which provides:

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.

In your request, you note several specific projects and code sections on which you worked, but do not indicate what specific connection those projects may have to your current employment, nor do you elaborate on your current projects or clients in your private law practice that may be directly affected by your involvement in matters in your previous employment with Prince George's County Government.

The Maryland State Ethics Commission has opined;

As a general matter, [the analogous State participation prohibition] has not been interpreted to flatly bar any employment with an entity involved in matters relating to a former agency, or an individual's appearance before the agency. Rather, it looks to identification of **particular matters** in which the individual was involved in any **significant** way in the context of their State employment, and forbids assistance or participation as to these on behalf of another party. There is no time limit on this prohibition....

In applying the [analogous State participation] prohibition we have generally viewed participation as including more than final authority or responsibility for a matter. Participation involving personal supervision of the work of others or involvement in a required sign-off or concurrence capacity are activities that have been viewed as significant participation. Providing advice and recommendations as to a matter is also participation.

Advisory Opinion No. 96-10 (1996)(emphasis added).Matters in which you significantly participated during your tenure as Deputy Director are relevant for purposes of an ethics inquiry, but §2-293(b)(2)(A) prohibits assisting or representing any party in “a case, contract or other *specific* matter involving the County.” (emphasis added). The Board looks to the definition of a “particular matter” developed by the Office of Government Ethics in interpreting 18 U.S.C. §207(a)(2) of the United States Code, a criminal provision prohibiting certain types of post-employment activities.¹ The regulation, 5 C.F.R. 2641.201(h)(1), describes the phrase “particular matter” as “a matter [which] typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product approval application, enforcement action, administrative adjudication, or court case.” Legislation or rulemaking of general applicability and the formulation of general policies, standards or objectives or other matters of general applicability are not considered “particular matters” under the regulations. 5 C.F.R. 2641.201(h)(2),

Without a “specific matter” to review, the Board cannot ascertain whether a matter is one in which you “significantly participated,” or whether a particular assistance or representation would run afoul of the Code of Ethics.

Clearly, your assisting or representing a party who is submitting a bid or proposal for any matter where you “assist[ed] a County agency ... in the drafting of specifications, an invitation

¹ Neighboring jurisdictions have also relied on this interpretive guidance from the Office of Government Ethics. See, e.g., Anne Arundel County Ethics Commission, Advisory Opinions AO-11-20 (2011)(citing Advisory Opinions AO-08-46 (2008), AO-07-89 (2007), and AO-07-25 (2007) applying 5 C.F.R. 2637.201(c), which was replaced by 5 C.F.R. 2641.201(h),

for bids, or a request for proposals for a procurement” is barred pursuant to the Code of Ethics § 2-293(i). Further, you cannot disclose confidential information acquired by reason of [your] public employment ... which is not available to the public. Code of Ethics § 2-293(g). You indicated you would not have any involvement in client matters that were underway during your tenure in [REDACTED]; however, there was no specificity provided regarding a pending matter with the County. Beyond the specific scenario involving Section 2-293(i), the Board cannot opine as to the propriety of hypothetical scenarios.

Therefore, after reviewing your submission, the additional information you provided during the closed session of the May, 9, 2014 Board meeting, and the Code of Ethics, it is the opinion of the Board of Ethics that you should seek ethics advice on specific matters, and regarding specific representation of clients, as they arise. Please note, the Board may grant exemptions to or modifications of Section 2-293 prohibitions upon request pursuant to the Code of Ethics § 2-293(h).

In reaching this decision, the Board of Ethics has relied upon the facts you have presented. We recommend that you seek an opinion from this Board and, depending upon the circumstance, legal counsel, if at any time you determine that a conflict of interest, an appearance of a conflict of interest, or violation of the Code of Ethics may occur. If you require additional information, please do not hesitate to contact this office.

Sincerely,

/s/ Covette Rooney
Covette Rooney
Board Chair