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County Executive

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THE PRINCE GEORGE'S COUNTY GOVERNMENT BOARD OF ETHICS

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

BOARD ADVISORY OPINION

February 14, 2019

County Administration Building
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772

RE: Case #19-0148

Dear :

On January 11, 2019, the Board of Ethics ("the Board") received your request for a formal advisory opinion regarding whether or not vendors Pure Media Group (d/b/a William Young) and H&W Printing are eligible to do business as paid vendors with the County government. In the past, you have hired both companies Pure Media Group and H&W Printing to provide services to your private political campaigns.

The County's official Purchasing Agent is the Office of Central Services ("OCS"). OCS is responsible for the procurement of goods and services for all County agencies.¹ As the Purchasing Agent, OCS may delegate Purchasing authority to other agencies. Mr. Robert Williams, the County Council Administrator, has advised that the Legislative Branch has been delegated such authority by OCS.² Mr. Williams advised that the County Council's Office of Finance is the Division responsible for facilitating the procurement of services on behalf of the Legislative Branch. As the Appointing Authority for the Legislative Branch, Mr. Williams typically signs for purchases, along with the Finance Officer. As part of the procurement process, the Office of Finance obtains the bids, licenses, certificates of insurance, review of SDAT for good standing, as well as, any other documents necessary for the purchase. The process used to make

¹ See Prince George's County Code § 10A-103(a).

² OEA requested copies of the written designation and to date no response has been provided. OCS Contracts and Procurement Manager, Marion Flamer-Brown advised that the Legislative Branch has not been delegated such authority. Whether or not a designation exist, is not germane to the ultimate question posed in this matter.

purchases on behalf of an individual Council Member's office is generally the same as that used to make purchases for the Legislative Branch. The request originates from the Council Member's office, or the division head or their designated finance person. The designated person will submit a purchase request to the Council's Office of Finance. Mr. Williams stated that although the Legislative Branch has been delegated purchasing authority, OCS is still involved directly or indirectly in the process of most purchases.

The Code of Ethics applies to officials,³ employees,⁴ and appointed County board and commission members. The Code isn't applicable to vendors doing business with the County. Though, as a provision in the contract with a vendor, the Purchasing Agent can opt to include as a condition of the contract, that the vendor agree to be bound by the provisions of the Code of Ethics. The Code is intended to ensure that the conduct of the County's business is free from even the appearance of partiality, favoritism or pressure. County employees and officials must at all times act impartially and with independent judgment to avoid even the appearance of a conflict of interest. The intention of the Ethics Code is that the provisions set forth therein be liberally construed to accomplish this purpose.⁵

Section 2-293(c) of the Code of Ethics prohibits an official or employee from intentionally using the prestige of his office for his own private gain or that of another. The performance of usual and customary constituent services does not constitute the use of the prestige of office for private gain or that of another. Usual and customary constituent services are services performed without bias or favoritism offered to others similarly situated on an equal basis without additional compensation.

This Board is unaware of any facts to suggest that you have taken any actions in either your private or official capacity, to assist either Pure Media Group or H&W Printing, in their efforts to do business with the County. The companies' prior work for your political campaign is not considered use of a prestige of office. The companies' eligibility to do business with the County is not affected by your prior affiliation, nor influenced by your official County role. Whether or not the companies are eligible to do business with the County is not a decision made by the County Council or the individual Council Members. These companies are subject to the same registration requirements as any other company seeking to be a registered County vendor.

OCS is the agency responsible for vetting and registering any vendors who seek to do business with the County. Entities seeking to do business with the County must first register as a vendor with OCS through the Contracts Administration and Procurement Division (CAP). Once a vendor has completed the registration forms, CAP will verify the vendor's Employer Identification Number with the Internal Revenue Service. Once the information is verified, the

³ Official means an elected official, an employee of the County, or a person appointed to or employed by the County or any County agency, board, commission, or similar entity whether or not paid in whole or in part with County funds and whether or not compensated. *See* Prince George's County Code of Ethics §2-291(a)(4.1).

⁴ Employee means an individual who is employed by the County. Employee does not include an elected local official. *See* Prince George's County Code of Ethics §2-291(a)(4.2).

⁵ *See*, Prince George's County Code of Ethics § 2-290-Statement of purpose and policy.

vendor will be directed by CAP to complete a questionnaire to provide additional information, such as, Letter of Good Standing from SDAT and the Certificate of Insurance. Once the vendor has completed all the prerequisites, CAP will make a determination as to whether the vendor has satisfied the requirements to become a registered County vendor. County Council is not involved in this process.

Section 10A-105(b) of the County's Procurement Laws, states that where the Purchasing Agent seeks to procure goods and services using sole source procurement, emergency procurement, special circumstances procurements and the Minority Business Opportunities program, the Purchasing Agent shall seek approval from the County Council. Section 2-293(a)(2)(D) of the Code of Ethics prohibits a County official except as permitted by Board regulations or opinion, from participating in any matter involving a business entity if the official is a party to an existing contract with that same business entity, if the contract between the parties could reasonably be expected to result in a conflict between the private interests of the official and his official duties. Thus, if the circumstances should arise where either of these two companies or another company similar situated, is the subject of a request made pursuant to Section 10A-105(b), and you have a private contract with said company, you are advised to recuse yourself from voting on that matter.

For the reasons discussed above, your previous affiliation with Pure Media and H&W Printing does not prohibit either company from seeking business opportunities with the County. Nor, would either company be precluded from providing services to your Council Office or the County Council as a whole, if they are a properly registered County vendor. If you have any questions or need further information, please contact the Office of Ethics and Accountability at 301-883-3445.

Sincerely,



Cassandra Burckhalter
Board Chair

