

ST. MARY'S COUNTY GOVERNMENT

ETHICS COMMISSION

David Willenborg, Chair



Board of County Commissioners

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August 11, 2020

[REDACTED]

Re: Advisory Opinion No. 20-1

Dear [REDACTED]:

The Ethics Commission has received and considered your written request for an advisory opinion dated February 12, 2020 (the "Request"). Your Request asks the Ethics Commission to provide an advisory opinion on whether a Metropolitan Commission ("MetCom") employee is prohibited from having secondary employment with an electrical contractor performing contractual work for MetCom for electrical improvements and maintenance to its facilities.

The MetCom employee works as a Utilities Mechanical/Electrical Specialist for one of MetCom's wastewater treatment facilities, and has no responsibility for the evaluation, selection, oversight or payment processes for MetCom vendors, such as the electrical contractor by whom he is employed. According to your Request, the work performed by the employee for MetCom is "similar" to the work he performs for his secondary, part-time employment with the electrical contractor.

At its meeting on July 6, 2020, the Ethics Commission received additional information from both you and the employee via teleconference. It is our understanding that the employee has been employed by MetCom for almost sixteen (16) years, and on a part-time basis by the electrical contractor for the past four (4) years, performing mostly residential electrical wiring. The employee performs no work for the electrical contractor under its contract with MetCom. Although the employee might provide input on the need for contractual electrical work to be performed at MetCom facilities, that decision is made by higher level management personnel.

The St. Mary's County Ethics Ordinance (Ordinance No. 2019-03) defines an "employee" in Section 158-3(f)(1) as ". . . an individual who is employed by the St. Mary's County Government or the St. Mary's County Metropolitan Commission." Section 158-3(p) of the ordinance defines "St. Mary's County Government" as including the St. Mary's County Metropolitan Commission. Accordingly, MetCom and the employee are clearly governed by the St. Mary's County Ethics Ordinance.

Section 158-5(b) (1)(i) of the ordinance provides that “[e]xcept as permitted by regulation of the Commission when the interest is disclosed or when the employment does not create a conflict of interest or appearance of a conflict, an official or employee may not:

(i) Be employed by or have a financial interest in any entity:

(A) Subject to the authority of the official or employee or the St. Mary’s County Government agency, board or commission with which the official or employee is affiliated; or

(B) That is negotiating or has entered a contract with the agency, board, or commission with which the official or employee is affiliated”

The employee’s current part-time employment with an electrical contractor providing contractual electrical services to MetCom is prohibited by the clear wording of Section 158-5(b)(1)(i)(B). While there is no evidence before us that the employee (a) makes decisions for MetCom or exerts influence in selecting an electrical contractor for work on its facilities, (b) determines the scope of work undertaken by the electrical contractor on MetCom’s facilities, or (c) directs the contractor’s work under its contract with MetCom, the wording and intent of the Ethics Ordinance is clear and unambiguous. The Ethics Ordinance prohibits an employee of a St. Mary’s County Government agency from employment by an entity performing work under a contract with the agency, board or commission with which the employee is affiliated.

Sincerely,


David Willenborg, Chair

cc: Joseph R. Densford, Esq.