CHARLES COUNTY ETHICS COMMISSION

Advisory Opinion 20-01

DATE: December 15, 2020

OPINION REQUESTED:

I am seeking a determination to whether it is ethically prudent for me as a County Commissioner, spouse or child of the Commissioner's to accept a contract from Charles County Roads for snow removal services?

OPINION OF THE ETHICS COMMISSION:

On November 18, 2020, the above request for opinion was forwarded to the Charles County Ethics Commission for a determination under Sections 170-1 – 170-11, collectively known as the Charles County Code of Ethics.

A Charles County Commissioner, or their immediate family member, has a financial interest in a local company that is capable of conducting snow removal services in the County and they have sought an advisory opinion under Charles County Code of Ethics, Section 170-1, et. seq. asking the Commission to determine whether it is ethical for their company to apply for and accept a spot on the snow removal contractors list.

Pursuant to Section 170-4 (J) Advisory Opinions, of the Charles County Ethics Code, The Commission is granted the authority to render this opinion. That Section mandates that "any person subject to this chapter may request an advisory opinion from the Commission concerning the application of this chapter" and that "the Commission…shall provide interpretations of this chapter based on the facts provided or reasonably available to the Commission within 60 days." There is no dispute that an elected County Commissioner is subject to the Charles County Code of Ethics, and, therefore, may properly request an advisory opinion under this section.
On Tuesday, November 24, 2020, the Ethics Commission convened virtually via Teams video conference to consider this question. The Commission heard testimony from Mr. William Shreve, Director of Public Works and was provided legal analysis by its counsel, Mr. Wes Adams, County Attorney for Charles County.

The issue at hand concerns the hiring of independent contractors to aid the County in snow removal in the case of a snow event during the winter season. [redacted] explained the following to the Commission:

1. Each year the County invites any company/individual capable of snow removal the opportunity to sign up to be on the snow removal contractor's list;

2. The contractors are provided a uniform price, based on the type of equipment and service offered with which to perform snow removal services;

3. The Contractors are only contacted in the event that snowfall exceeds three inches;

4. The County has a computerized system that works down a "list" sequentially offering assignments to the individual contractors;

5. Contractors cannot pick their assignments nor negotiate prices for their services;

6. Assignments are based, in part, on geography and capability of the particular snow removal company (i.e. – sometimes the County may need a front loader to scoop and remove snow from an area);

7. Certain of the contractors serve as regional supervisors who ensure that the work in a certain geographic area is completed;

8. Contractors can be moved up or down the list based on the quality of their rendered service to the County;

9. The computerized assignment system is monitored by a lower level staff employee and there is no supervisory level decision making that goes into the assignments; and

10. The County regularly does not have enough contractors apply to be on this list to satisfy every assignment during a snow event.

Section 170-5 of the Charles County Code, Code of Ethics, governs specific prohibitions of conduct and conflicts of interest and generally prohibits both actual and appearance of conflicts for an official (and covered family members). In particular, subsection (a) prohibits an official from participating in "the disposition or decision" of a matter in which the "official or a qualified relative of the official has an interest. Similarly, subsection (b) prohibits substantive decision making regarding the official in their official government capacity and businesses in which they possess a financial interest. *See, Charles County Code, Code of Ethics, Sec. 170-5(b).* There is major exception, which removes, *de facto* any actual or implied conflict and permits the Commissioner to render an opinion under subsections A(1) & (3) of Sec. 170-5 ("Except as permitted by Commission regulation or ***opinion...***"). That exception states: "Except in the exercise of an ***administrative or ministerial*** duty that ***does not affect*** the disposition or decision with respect to any matter..." the following activities would otherwise be prohibited. Based on a review of the evidence in this matter and the process by which snow removal contracts are sought, received and paid, as well as how assignments are made and supervised, it is clear that the Commissioner role in that process, if any, can only be characterized as administrative or ministerial. In fact, it is clear that the Board of County Commissioners have almost no role, other than authorizing and budgeting county funds, in the awarding of any contract, the geographical area served, the price paid, the amount paid or any other factor which could be seen as an improper influence over this relationship.

The County Commissioners do not appropriate any specific amounts of money to any particular vendor, they do not exercise any authority over the order of the vendors, the selection of the vendors or the supervision of the vendors (in fact, supervision of the snow removal vendors is by

other outside contractors). In short there is little or no influence that the Commissioners play in the selection of these vendors or the price paid to them that would, in the opinion of the Ethics Commission, create an actual conflict.

With respect to any appearance of conflict, while an argument could be advanced that because it is the use of tax payer money, over which the Commissioners exercise control, they payment for services rendered to a Commissioner owned business appears to be "self-dealing", once the Commission reviewed the process, any appearance dissipates. First, the County appropriates a set aggregate amount that it would pay regardless of who completed the work. Second, there is no selection criteria over which vendors are accepted or assigned snow removal assignments – if a particular company has signed up, has the requisite equipment for the snow removal need and is next on the list, they are offered the assignment.

It is clear to the Commission that this process removes any possible taint of unfair influence that could be created because of a Commissioner's ownership interest in the company providing the service to the County. Therefore, the Commission finds that any "appearance of conflict" would not apply based on the facts and evidence placed before the Commission.

Finally, the Commission finds it persuasive that [redacted] the Director of Public works, testified that the County frequently finds that it does not have a sufficient number of vendors to complete the snow removal work during a snow event. Given there are not sufficient vendors applying for positions, the Commission believes that there is even less of a chance for any perceived preferential treatment in this situation.

Therefore, the Commission finds, in response to the Board of County Commissioners question, that it would not be a conflict of interest or a violation of the Charles County Code of Ethics, for the company in which the Commissioner has an ownership interest to apply to be on the list for and accept a snow removal contract from the Charles County Government through the Department of Public Works.

APPROVED THIS 15th day of December 2020.

ETHICS COMMISSION OF
CHARLES COUNTY, MARYLAND

_____/s/_____
Henry A. Collins, Jr., Chairman

_____/s/_____
Stephen P. Fitzgerald, Esq., Vice Chairman

_____/s/_____
Natalie Cotton, Commission Member

_____/s/_____
Lisa Elliott, Commission Member

_____/s/_____
Ralph Patterson, Commission Member