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The Honorable Patrick E. Thompson
County Attorney for Queen Anne's County
102 East Main Street, Suite 203
Stevensville, Maryland 21666

BY FAX AND E-MAIL

Dear Pat:

I had hoped to hear from you today following yesterday's phone conversation about the new Queen Anne's County ethics code. Since I will be out of town and unavailable until Monday and we won't have a chance to talk again until next week, I am writing to set out the substance of the urgent matters I shared with you yesterday.

As you know, Avery Aisenstark and I represent Ethics Matters, Inc.

Our client is deeply concerned that the newly enacted Ethics Code be immediately and fully implemented. In particular, we are distressed to learn that the new financial disclosure requirements – which apply to more officials and employees than the prior law and require broader, more meaningful disclosures than the prior law – have not yet been implemented and might not be implemented for a year.

Frankly, we are somewhat uncertain as to what the County's position on the matter is at present. Our understanding, however, is that up to now the County's position has been that the disclosure requirements of the newly enacted law are inoperative in 2006. That is the erroneous view to which this letter responds.

The County's rationale appears to be that immediate implementation of the disclosure requirements would somehow constitute a retroactive law and that the County Commissioners,

therefore, did not intend to have those disclosures apply in 2006.

That position is simply wrong, on several grounds:

First, this is not what the newly enacted law says. The law became effective on or about December 31, 2005. It unequivocally requires, among other things, a broad range of officials and employees to file statements, on or before January 31 of each year, disclosing certain interests held in the prior calendar year. Nothing in the statute even suggests an exception for 2006. Indeed, as we understand it, the County Commissioners intentionally acted quickly to pass the bill so that it would become effective before the end of 2005 and fully implemented in 2006. But even that supportive bit of “legislative history” is irrelevant. In the final analysis, the unambiguous statutory text controls. We agree with Justice Frankfurter’s witty observation: “[T]his is a case for applying the canon of construction of the wag who said, when the legislative history is doubtful, go to the statute.” *Greenwood v. United States*, 350 U.S. 366, 374 (1956).

Second, the apparent rationale for this delay – that it somehow unfairly applies new rules to prior conduct – conflates two entirely distinct concepts. To be sure, the new *prohibitions* governing conflicts cannot be applied to sanction conduct that occurred before those prohibitions were enacted. And we do not argue otherwise. *Disclosure* requirements, however, stand on an entirely different footing. They do not seek to punish, sanction, or censure any antecedent conduct. They merely seek to inform. And, certainly, the mere disclosure of some conduct or interest held in 2005, even if that conduct or interest is newly prohibited in 2006, does not call the discloser to account for the newly prohibited conduct. It does, however, further the important purposes of ethics standards by informing the public of the discloser’s interests, including those that are not prohibited.

That requiring disclosure of interests held in 2005 is not, by any means, a retroactive application of law to an antecedent event is exemplified by the provisions of sec. 8-13.B. That section requires all newly appointed officials and employees to file a disclosure statement for “the calendar year preceding the official appointment date”. During that “preceding calendar year”, of course, the individual was subject to none of the law’s conflicts requirements; nonetheless, the statute quite properly requires public disclosure of specified interests.

In our view, EMI’s position is a straightforward legal matter and not a policy question to be decided or interpreted by the Ethics Commission. The cases are legion that draw the distinction that we – and the County’s own statute – make here. If you wish, we will be happy to furnish citations to some of the many available authorities.

We urge you to reconsider the position we understand the County to have taken up to this point. Our client has no desire to pursue this matter in court, with all the attendant expenses and potential unpleasantness that litigation unfortunately engenders. But the matter here goes to the very heart of the new Ethics Code and its implementation.

We hope and trust that you will communicate these concerns to the County Commissioners and the Ethics Commission.

Very sincerely yours,

Stephen H. Sachs

ccs: Lynn Putnam Knight, Esq.

Ethics Matters, Inc.