

M E M O R A N D U M

April 4, 1991

TO: Gene Lynch
Chief Assistant to the County Executive

VIA: Joyce R. Stern *Joyce R Stern*
County Attorney

FROM: Linda B. Thall *Linda B. Thall*
Senior Assistant County Attorney

RE: Supervision of Employees in the Office of Minority and
Multicultural Affairs

It is my understanding that the County Executive plans to abolish the position of the Director of the Office of Minority and Multicultural Affairs (OMMA) in the near future. At present, the Director is the supervisor of OMMA employees. Once the Director's position is abolished, however, changes to the supervisory structure within that office will be required. The Executive's recommended budget for fiscal year 1992 shows that the remaining staff of OMMA is to become part of the County Executive's Office and that one of the Special Assistants to the County Executive will be given responsibility for supervision of these employees. A question has arisen as to whether the merit system employees in OMMA may be supervised by one of the County Executive's Special Assistants, as these assistants are non-merit employees appointed by the County Executive and their appointment was not subject to confirmation by the County Council.

As you know, all but a few officers and employees of the County Government are protected by the merit system. Under the framework of the County Charter, all officers and employees of the County Government are eligible for merit system status unless specifically exempted.¹ The merit system protections are

¹ Among those excluded from the merit system in Charter §401 are the Chief Administrative Officer, the heads of departments, the heads of the principal offices and agencies of the government, and the County Executive's three special

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spelled out in the County Charter, the County Code (Chapter 33), and the Montgomery County Government Personnel Regulations. Merit system status is dependent upon the position held by the employee. This status is not determined or qualified by reference to the merit system status of the employee's supervisor.

Most merit system employees work for a particular department office or agency. These employees are appointed by their department head, who also has the power to remove them from their positions (subject to the constraints of the merit system). (Charter §216) Although the employee may be subject to multiple levels of supervision, including supervision by other merit system employees, the department head has supervisory authority over all employees in his or her department. The overall responsibility for supervision of Executive Branch departments is given to the Chief Administrative Officer. (Charter §211)

There is no doubt that the Charter permits merit system employees to be supervised by their non-merit system department heads. Similarly, the Chief Administrative Officer also serves as the ultimate supervisor of merit system employees (subject, of course, to the direction of the County Executive). The only question presented is whether the fact that the Special Assistants to the County Executive are not subject to Council confirmation makes them ineligible to supervise merit system employees.

I can find no prohibition in the charter or in the merit system law that precludes the assignment of supervisory duties to a Special Assistant for the County Executive. The fact that the merit system employees working for OMMA would receive

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assistants. The department heads (as used herein, this term will also include the heads of principal offices and agencies) are appointed by the County Executive and are subject to confirmation by the Council. (Charter §215) The Special Assistants are also appointed by the County Executive, but they are not subject to Council confirmation.

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day-to-day supervision from the Special Assistant would not alter the fact that the Chief Administrative Officer would still have final supervisory authority over those employees, as he does for all other merit system employees in the Executive Branch. In this way, final responsibility for supervision still rests with the Chief Administrative Officer, although, as a practical matter, primary supervision would be carried out by the Special Assistant. In no way would the merit system rights or protections of the OMMA employees be altered.

Based on the above, it is my opinion that a Special Assistant to the County Executive may serve as the supervisor of the merit system employees assigned to work in the Office of Minority and Multicultural Affairs. The status and rights of these employees would not change by virtue of the switch in supervision from the Director of OMMA to the Special Assistant. As Executive Branch merit system employees, OMMA employees would continue to be subject to ultimate supervision by the Chief Administrative Officer.

LBT:kh
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cc: Keith A. Kolodgie
Assistant to the Chief Administrative Officer