



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

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December 19, 2001

Waddell Longus, Executive Secretary
Merit System Protection Board
100 Maryland Avenue
Room 113
Rockville, MD 20850

Re: Board's authority to participate in appeals

Dear Del:

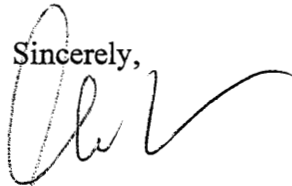
I write in follow-up to my meeting with the members of the Merit System Protection Board to provide a copy of the case *Miles v. McKinney* and its progeny as requested.

As discussed, the *McKinney* doctrine restricts quasi-judicial agencies from participating in appeals from their own decisions. The principal exceptions to this doctrine involve situations in which the agency acts in a capacity other than as a quasi-judicial. Examples of these types of agencies include licensing boards that have both the responsibility to decide cases and to bring regulatory action against licensees. This type of exception I think applies to the Board when it conducts an investigation and brings charges against a person for violating the merit system law under the authority of Sections 33-10 and 33-13A. Thus, in those cases where the Board has conducted an investigation and brought charges against an individual or issued orders to enforce the merit system, the Board would likely be considered to have standing in any court proceeding involving a review of or appeal from its decisions regarding those actions.

Rather than copy all of the decisions that flow from *McKinney*, I am providing a list of cases that cite *McKinney* and a full copy of the case of *Carroll County Ethics Commission v. Lennon*. I think the *Lennon* case provides a good example of the exception to the *McKinney* doctrine and I am quite familiar with it if you have any questions. I am also enclosing another recent case that I was unfamiliar with when I spoke with you *Calvert County Planning Comm'n. v. Howlin Realty Management, Inc.* While I do not believe this case clearly allows the Merit Board to intervene in an action where it acts solely in its quasi-judicial capacity, one could fashion an argument for the Board's intervention in an appropriate case where the Board was interested in the outcome of the case based upon policies the Board is charged with establishing or furthering. I am inclined to believe that to survive the *McKinney* doctrine the issues involved would need to effect the principles of the merit system, as opposed to individual grievances.

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Thank you for giving me the time to meet with the Board; I would look forward to doing so on a regular basis, if the Board would like. I believe the people of Montgomery County are very fortunate to have people with their qualifications serving in this important role and owe them quite a debt of gratitude. I hope you have a very happy holiday season and please convey my best wishes to the members of the Board.

Sincerely,


Charles W. Thompson, Jr.

Enclosures (4)

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