



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan  
County Executive

Charles W. Thompson, Jr.  
County Attorney

MEMORANDUM

TO: David W. Edgerly, Director  
Department of Economic Development

FROM: Marc P. Hansen, Chief *Marc Hansen*  
Division of General Counsel

DATE: December 21, 1999

RE: Economic Development Fund—Maryland Economic Development Corporation

You have indicated an interest in granting funds from the County Economic Development Fund to the Maryland Economic Development Corporation (MEDCO). MEDCO would use these funds to assist the expansion of private businesses in Montgomery County. You have also expressed an interest in permitting MEDCO to loan Economic Development funds to private employers who would repay these loans directly to MEDCO; MEDCO would retain these funds to reloan or grant them to other private employers.

You have asked whether funds from the County's Economic Development Fund may be used in this manner.

ANSWER

The Director of Economic Development may appoint MEDCO to act as the Director's agent to disburse money from the County's Economic Development Fund to eligible private employers. As the Director's agent, MEDCO would need to comply with all of the requirements of the County law establishing the Economic Development Fund to the same extent as the Director would.<sup>1</sup> But the Director may not authorize MEDCO to retain loan payments made by a private employer. Under County law, loan payments must be deposited into the Economic Development Fund.

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<sup>1</sup>The appointment of MEDCO as your agent would need to be done through a memorandum of understanding. If MEDCO were to receive any compensation for providing this service, the memorandum of understanding would have to comply with all procurement requirements of the County.

## ANALYSIS

MEDCO is a public instrumentality of the State of Maryland.<sup>2</sup> MEDCO's purpose is "to assist state and local economic development agencies to contribute in the expansion, modernization, and retention of existing Maryland enterprises as well as the attraction of new business to the state."<sup>3</sup>

The County Economic Development Fund is a continuing, non-lapsing fund whose purpose is to aid private employers who are located or plan to locate operations in Montgomery County.<sup>4</sup> The Director of Economic Development may allocate money from the Economic Development Fund by making a loan or grant to eligible private employers. To be eligible, a private employer must bring a significant number of new jobs to the County, add a significant number of new jobs to an existing operation in the County, or agree to retain a significant number of jobs at an existing operation in the County.<sup>5</sup> A private employer does not include an entity controlled by a government.<sup>6</sup> The Director of the Department of Finance creates and controls the Economic Development Fund subject to making disbursements as directed by the Director of Economic Development.<sup>7</sup>

There is no question but that the Director of Economic Development may carry out his or her duties with regard to the County's Economic Development Fund by utilizing the services of an independent contractor, like MEDCO. But an outside contractor may not exercise any greater authority over the Economic Development funds than the Director of Economic Development. Accordingly, any memorandum of understanding between Montgomery County and MEDCO must require MEDCO to comply with all of the requirements of County law governing the Fund, including limiting grants or loans to qualified private employers. The memorandum of understanding must provide MEDCO with sufficient criteria upon which MEDCO may base its decisions on whether to loan or grant funds and how to prioritize eligible applicants for receipt of Economic Development funds. The memorandum of understanding should also require MEDCO to account separately for the funds provided to MEDCO under the memorandum of

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<sup>2</sup>Md. Ann. Code Article 83A, Section 5-203.

<sup>3</sup>Md. Ann. Code Article 83A, Section 5-202.

<sup>4</sup>Sections 20-73, 20-74, Montgomery County Code (1994).

<sup>5</sup>Section 20-75, Montgomery County Code.

<sup>6</sup>Section 20-74 (c), Montgomery County Code.

<sup>7</sup>Sections 20-73, 20-75, Montgomery County Code.

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understanding and should provide for annual reports and audits to the Director of Economic Development.

It is doubtful that County law permits MEDCO to retain loan repayments for the purpose of making future loans or grants to eligible private employers. Section 20-73(b) specifically provides that the Economic Development Fund consists of "all payments on any loan from the Fund." An argument might be made that the Director of Finance could appoint MEDCO as his or her agent to administer a sub-account under the Economic Development Fund for the purpose of receiving and redistributing loan repayments. But this conclusion would not be free from doubt. In any event—based on my discussions with Tim Firestine—Finance is unwilling to give MEDCO such a delegation of authority.

I trust you will find this memorandum responsive to your questions. Please let me know if you would like to discuss these issues further.

MPH:plb  
cc: Timothy L. Firestine, Director of Finance  
John J. Fisher, Associate County Attorney  
Judson P. Garrett, Associate County Attorney

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