Anne Arundel County Ethics Commission

AO-95-106

By memorandum dated December 20, 1995, you have requested the opinion of the Ethics Commission regarding requests you received from two PACE employees for permission to engage in outside employment. You have provided the following information in your memorandum and its attachments from the subject employees.

One employee is the Chief Building Inspector for the Inspection Division of PACE. He wishes to perform structural inspections for a company which warranties that newly constructed homes are free from specified structural defects. The company provides these warranties for homebuilders who enroll their newly constructed homes in the program. The PACE employee would be working for the company, not for any contractor.

You have approved this outside employment subject to an opinion of the Ethics Commission and provided the employee does no work for the outside company in Anne Arundel County or during his normal County working hours.

The second request comes from an engineer in PACE's Permit Application Center. This employee would like to perform inspections of commercial buildings in Prince George's County pursuant to a policy Prince George's County has established for certification of construction by third party inspections. The employee would work for the property owners directly.

The restrictions on outside employment of County employees are detailed in Section 3-105 of Title 9 of the Anne Arundel County Code. Other sections which are applicable to these questions are Sections 3-104 and 3-107.

Section 3-105 prohibits an employee from

> being employed by an entity subject to the authority of the employee or the authority of the County agency by which the employee is employed;
>
> holding any other employment relationship that would impair the impartiality or independent judgment of the employee; and
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> being employed to assist or represent a person in connection with a matter in which the County has an interest, except in the course of the employee's official duties.

Therefore, the employees in question could not be employed by anyone who is subject to the authority of PACE, has a present or imminent contractual relationship with PACE or, with regard to a matter in which Anne Arundel County has an interest. Among other things this would mean that no inspections could be done in Anne Arundel County or for anyone who is also building or planning to build in Anne Arundel County.

While this might limit the employee who wants to provide third party inspections in Prince George's County, it might well prohibit the employee who wishes to work for the warranty company entirely. This absolute prohibition might occur if the company provided warranties in Anne Arundel County and those warranties are subject in some way to PACE's jurisdiction. If PACE has no responsibility with regard to these warranties, then no absolute prohibition would result.

Section 3-104 prohibits the use of the prestige, title, or authority of the employee's office or position for the employee's private gain or the gain of another. In the situations presented this would prohibit the employees from representing themselves as Anne Arundel County employees during the course of their outside employment, from using any County vehicle or uniform during their outside employment, or using contacts made in the course of their County employment to promote their outside employer or that employer's business or to promote their outside employment.

Section 3-107 prohibits employees from disclosing confidential information not available to the public which they gained in the course of their County employment. It is not apparent whether this provision will be relevant in the situations presented, but employees should be aware of it.

Further, as you noted in your comments to one of the employees, no outside work should be done during regular working hours, except when on an approved leave of absence.

While not dictated by Ethics law, employees should be aware that it would be in their best interest to assure themselves that they have liability coverage for their outside employment activities.

Subject to the foregoing restrictions the employees may engage in the outside activities described in the documents accompanying your memorandum.