

Anne Arundel County Ethics Commission

AO-96-102

This inquiry presents several questions, arising from an individual police officer's outside employment, and from an earlier opinion issued by the Ethics Commission, Case OP 95-103.

Background:

The facts leading to the inquiry are that an Anne Arundel County police officer started his own business called the "Promotional Edge." This business provides or would provide instructive seminars, written materials, and videos to police officers taking the sergeant's and lieutenant's exams. The material would show "how, when, and what to study" to obtain a "promotional edge." The materials would be offered through mail order. (For other particulars, see Opinion 95-103). In its previous opinion, the Commission advised the officer that he could market his seminar to other "police departments in the state," with certain limitations, but that he could only offer his services to other county employees on a gratuitous basis. The employee responded with the following questions.

Discussion:

1. Whether, if a county employee is permitted to offer his otherwise for profit services to fellow employees for free, there is a way to protect himself from "jealous or disgruntled employees making false accusations?" The very question provides the best reason for the prohibition against outside employment which would "impair the impartiality or independent judgment of the employee." Whether or not the allegations against the employee are true or false, the tension within the department, and the potential ill-feelings created by the employee's services provide sufficient reason to prohibit even free services offered within the employee's agency. It is unlikely that all conflicts could be avoided in this arrangement. In that event §3-105(b) would prohibit the employee from offering his services, whether or not for profit, to the employees in the county police department. And, although the employee does not make a profit from "free" services, he may benefit commercially in other ways. For example, he would benefit from recommendations of fellow employees who used his services. He could advertise his "experience" and the number of seminars taught or the number of police officers who have used his services. These indirect benefits constitute a "private gain" within the prohibitions of §3-104(a). Another bar to the use of these services is the provisions of §3-101(a)(2)(i):

(a) . . . an employee may not participate in any matter, except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to that matter, if:

(2) any of the following is a party to the matter:

- (i) any individual or business entity that has a business, contractual, or other financial relationship with the employee; . . .

The relationship created between the employee and the people who use his services would be a business relationship within the meaning of the section, because even without money changing hands, there would be a “benefit” exchanged.

If the employee advertises his services and offers them through mail-order, it is his responsibility to ensure that these services are not available for purchase to Anne Arundel County police officers. How he accomplishes this goal is not within the authority of the Ethics Commission to advise.

2. Whether the employee can offer his services, for a fee, to non-employees who are applying for entry level positions within the police department. Presumably, some of the applicants using the employee’s services will be hired as new officers. The same problems could arise as these new employees are evaluated and proceed through the probationary period. The fact that they use the services before they are hired is irrelevant. The same relationship would exist between the employee-supervisor and the new hires and the same conflicts could potentially arise.

3. The final two questions are related. They are: whether the ethics law applies to supervisors and non-supervisory personnel; and, whether other types of outside employment that do not involve the promotional process would be permitted. The ethics law applies to all employees. The supervisory nature of certain positions present different issues under the law because of the additional elements of trust and responsibility assumed by supervisors in their relationships with other employees. The power to hire, the power to discharge probationary employees, the power to affect the promotional process, the power to dictate day-to-day assignments, the power to discipline, and the power to advise and provide guidance, all increase the employee’s responsibility to scrupulously follow the legislative policy set forth in §1-102(a)(1) and (2), which acknowledges that

- (1) . . . the people have a right to be assured that the impartiality and independent judgment of County officials and employees will be maintained; and,
- (2) that this confidence and trust is eroded when the conduct of the County’s business is subject to improper influence or even the appearance of improper influence.

The State Ethics Commission issued an opinion dealing with a lieutenant in the Department of Corrections who was interested in marketing insurance to the officers in his department, through a union approved brokerage firm. The Commission found that

. . . the existence of a supervisory relationship, with general day-to-day operational authority vested in the Officer as a supervisor, would result in an inherent prestige that would be used by him any time he sought to sell or otherwise have insurance dealings with his subordinates. COMAR, Title 19A, Opinion 85-27.

The Commission concluded that the sale of insurance, whether through the union or individually, to persons supervised by the employee, was prohibited. The Commission further found that the employee would not be prohibited from marketing insurance to other correctional employees, as long as the marketing and provision of service did not occur on-site, and as long as he did not use his position, or the prestige of his office to advance his private business.

Conclusion:

The Anne Arundel County Ethics Commission agrees with the reasoning and conclusions of the State Ethics Board. It is the nature of the relationship that determines the applicability of the restrictions on outside employment to a particular situation. For these reasons, the Commission advises that §§3-101(a)(2)(i), and 3-104(a), and 3-105(b)(2), prohibit the police officer from marketing or providing his business services, known as the Promotional Edge, for a fee or for free, to members or potential members of the Anne Arundel County Police Department. Further, the Commission advises that, any advertising, selling, or providing services cannot be done on-site in any other police department and that the officer may not use his position or the prestige of his position to advance his private business interests.