

## Anne Arundel County Ethics Commission

### Advisory Opinion 96-108

The attorney to the Board of License Commissioners has asked whether he may serve on the County Executive's campaign finance committee, without violating the Ethics Law of Anne Arundel County.

Based on a review of relevant law, the Commission concludes that the attorney to the Board of License Commissioners may serve on the County Executive's campaign finance committee, subject to certain restrictions set forth below.

#### **Discussion:**

The Maryland Code, §15-112(d) provides that “. . . There shall be an attorney to the Board [of License Commissioners,] at an annual salary of \$8,000.” According to the Board's attorney, his work involves being present at proceedings and providing advice about the conduct of hearings and the admissibility of evidence. He is present during the decision making process and can comment and presumably offer his opinions on the evidence presented. He may help prepare the written decisions. He does not have a vote on any decisions made by the Board.

The first question raised by this inquiry is whether the attorney hired by the Board is an employee within the meaning of the Ethics Law, Art. 9, §101(v) which defines employee to include “a member or employee of the Board of License Commissioners.” Ordinarily, an attorney is considered to be an independent contractor.” *Baker, Watts & Co. v. Miles & Stockbridge*, 95 Md. App. 145, 180 (1993); *Brady v. Ralph Parsons Co.*, 308 Md. 486 (1987). In *Baker*, the Court acknowledged that an attorney could be considered an employee of the client where certain criteria are established. Those criteria include: “(1) the power to select and hire the employee, (2) the payment of wages, (3) the power to discharge, (4) the power to control the employee's conduct, and (5) whether the work is part of the regular business of the employer.” *Id.* At 180.

The Court said that the decisive criteria would be the power to “. . . control and direct the employee in the performance of the work and the manner in which the work is to be done.” *See also, Mackall v. Zayre Corp.*, 293 Md. 221, 239 (1982). Absent the right to control, the worker involved would be an independent contractor.

It appears from the description of the type of duties performed by the Board's attorney, that all the criteria are met which would create an employee-employer relationship between the Board and its attorney. Presumably, the board selects its attorney, §15-112(b). The amount of compensation is dictated by statute and is not within the power of the attorney to change. The power to hire implies the power to discharge. The conduct of the attorney is controlled to a large extent by the chairperson, who conducts the hearing. Finally, the attorney's participation in hearings is part of the regular business of the Board. Since the attorney to the Board of License

Commissioners is an employee of the Board, he would be subject to the provisions of the Ethics Law.

The next question raised is whether an employee of the Board of License Commissioners of Anne Arundel County can serve on the campaign finance committee of the County Executive for the same county. The State of Maryland expressly permits participation in “political activity” by state employees. State Personnel and Pensions Art. §§3-203, *et seq.*, Annotated Code of Maryland. Although the statute does not apply to county employees, there is nothing in the Ethics Law that specifically prohibits an employee from engaging in political activity. (The State Ethics Commission, in Opinions 80-2 and 94-2, specifically noted that there was no provisions in the State Ethics Law absolutely barring political activity.)

**Conclusion:**

Although there is no prohibition against an employee serving as a member of a campaign finance committee, there is a prohibition against holding any outside employment relationship that would “impair the impartiality or independent judgment of the employee” §3-105(b)(2). Additionally, the employee may not use the “prestige, title, or authority of [his] office” for anybody’s gain. And, finally, the employee must avoid any activity which would be “subject to improper influence or even the appearance of improper influence” §1-102(a)(2).

At a minimum, therefore, the employee should ensure that the committee will not solicit or receive any gift, whether monetary, or in kind, from any person or corporation engaged in the manufacture or sale of beer or other alcoholic beverages, or from any licensee, or potential licensee. The employee must exercise discretion to avoid any appearance of improper influence in any other circumstances that may arise in the course of his outside employment.