

May 21, 1997  
Re: IO-97-112

You inquired whether you could accept secondary employment from a company that is submitting a permit fee schedule to St. Mary's County government as part of that county's plan to privatize their code enforcement program. Your responsibilities for the company would be to review the proposed fee schedule to determine whether it satisfies code requirements. This job opportunity will be of limited duration and involves only this one proposal. There will be no involvement between this company and Anne Arundel County government.

You are currently employed with Anne Arundel County as a building inspector in PACE. You indicated that you saw this company's advertisement for the position in the paper and that you responded to it. The company contacted you with a job offer after learning of your expertise in the area of permits, both through the county and through previous job experiences.

There are two provisions of the ethics law that apply to issues of secondary employment. The first provision, §3-105 prohibits secondary employment with an entity that does business with, or is subject to the authority of your agency. It also prohibits an employee from representing an secondary employer in a matter in which the county has an interest. You have indicated that this company does no business in Anne Arundel County and that the matter for which you would be hired involves only St. Mary's County, so the prohibitions of §3-105 would not apply.

The other relevant provision of the ethics law that applies to secondary employment issues, is §3-104, which prohibits an employee from using "the prestige, title, or authority of the employee's office or position for the employee's private gain or the gain of another". This section has been interpreted by the ethics commission to mean that you may not accept a job offer from contacts you acquire solely because of your position in county government or because of knowledge or skills you acquired exclusively in your position with the county.

The company that seeks to hire you did not seek you out because of your position with the county. Rather, it placed a print advertisement for the position in the newspaper, and you responded. You had never heard of this company and had no contacts in the company. Because your expertise in the field of permits preceded your employment with the county, the offer of employment was not due to your use of the "prestige, title, or authority " of your position in the county.

Clearly, this opportunity for secondary employment will have no impact on your county duties. For this reason, and because you received the offer as a result of your expertise in a subject acquired over years and through various experiences, in competition with others and on an equal footing, there would be no violation of the ethics law for you to accept this secondary employment.

Thank you for your inquiry. Please feel free to call should you have any other questions.