

**MEMORANDUM**

**FROM:** Betsy K. Dawson, Executive Director  
**DATE:** February 4, 1997  
**RE:** IO-97-15

You inquired whether you and your spouse may own and operate a restaurant and bar in Anne Arundel County. You stated that your spouse would be the president of the company and that you would serve as vice-president and secretary-treasurer. You also stated that this business is to be your spouse's responsibility primarily but that your duties would include the financial and physical maintenance aspects and that you would occasionally act as part time cook. You were advised through the chain of command that you could not own and operate such an establishment *within* Anne Arundel County. You also stated that the Assistant County Attorney for the police department advised you that you could own and operate such an establishment provided that you would not sell alcohol as a bartender or check identification at the door or serve as a bouncer.

The Anne Arundel County ethics law, Article 9, §3-105, contains certain restrictions to outside employment. The sections pertinent to your inquiry are as follows:

(b) An employee may not:

(1) be employed by, or have an interest , in an entity subject to the authority of the employee or the authority of the County agency, board, or commission with which the employee is affiliated, or any entity that is negotiating or has entered into a contract with that agency, board, or commission; or

(2) hold any other employment relationship that would impair the impartiality or independent judgment of the employee.

(c) (1) An employee may not be employed by any person or undertake on behalf of any person to assist or represent that person in connection with a matter in which the County has an interest, except in the course of the employee's official duties.

While any of those above-cited provisions may raise issues as to the secondary employment you seek, it is not necessary to resolve those issues. The police department has the authority, pursuant to the Law Enforcement Officer's Bill of Rights, Article 27, at §729A, to regulate secondary employment. It has exercised those rights in its departmental rules and regulations. The provisions pertinent to your inquiry are found in Index Code 712, IV. Review Criteria. These criteria provide in part, that, " B. Requests for secondary employment will be denied if the employment: . . . 3. May present a conflict of interest with the officer's duties."

That provision, in sub-section C, further provides that,

Secondary employment *may* be approved in businesses which sell or dispense alcoholic beverages, providing: the business [is] not a tavern or combination restaurant and tavern; the sale or dispensing of alcoholic beverages is not the primary service of the business; the employed officer will not be required to perform security or law enforcement functions associated to the sale or dispensing of alcoholic beverages, i.e., checking I.D. or evicting intoxicated patrons(bouncer); or, the officer will not sell, serve, nor handle alcoholic beverages in any fashion.*(emphasis added)*.

These provisions are at least as restrictive if not more restrictive than the Anne Arundel County Ethics Law. The Commission believes that it is within the authority of the police department to enact rules that are more restrictive than the provisions of the county ethics law, and that it is the province of the department to interpret those rules as it deems necessary. It is not for the Commission to substitute its judgment for that of the police department in determining that a conflict of interest exists in a request for specific secondary employment. Rather, the Commission will only exercise its judgment when departmental ethics rules or the interpretation of those rules falls short of the minimum standards set forth in the county -wide ethics law.

Therefore, it is the conclusion of the Ethics Commission that the deputy chief's decision on your request for secondary employment is based on a valid interpretation of a valid departmental rule and you must appeal that decision through departmental channels, if such appeal is permitted. The fact that you believe that you have received contradictory opinions from sources within your department is not a matter for the Ethics Commission to consider.

Thank you for your inquiry. If you have further questions, do not hesitate to call.