

March 19, 1997  
Re: I-97-39

You inquired whether you could accept secondary employment with a vendor who currently does business with your department and with your specific office. The vendor supplies some items for your office and competitors supply other items that you use. You indicated that you have authority to order this vendor's products through the purchasing office. You asked two specific questions:

1. Whether you could accept secondary employment with this vendor selling products that Anne Arundel County government uses but does not currently order from this particular vendor, if you did not try to sell to the County government?
2. Whether you could work for this vendor in another state but not in Maryland?

Section 3-105(b) of the Anne Arundel County Ethics Law, restricts outside or secondary employment where the secondary job would create a conflict of interest with the employee's work for the county. The pertinent provisions provide that 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<sup>1</sup> with that agency, board, or commission; or

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

Assuming that the contract or contracts between the vendor and the County exceeds the minimum amount of one thousand dollars set forth in §3-105(a), then any secondary employment that you undertake with this vendor, inside or outside of the state of Maryland would violate the provisions of §3-105(b)(1).

Even if the contract does not meet the threshold amount set forth in the law, your employment by this vendor would at least appear to impair your impartiality or independent judgment. As the vendor's employee, you would be more likely to recommend his product to others, or to make contracts with him in your official county capacity, the theory being that what is good for the employer, is good for the employee. You would appear to favor "your" vendor over others and you would look to your secondary employer for favors in your employment relationship as well.

An additional obstacle to your secondary employment with this vendor is found in §3-

---

<sup>1</sup> A contract is defined in this provision as an agreement that binds the County to pay in excess of \$1,000 for the purpose for which the contract is made.

104, which provides that ". . . an employee may not use the prestige, title, or authority of the employee's office or position for the employee's private gain or the gain of another." This provision means in part, that where the job offer "flows directly" from the employee's official position, it is offered because of the employee's prestige, title, or authority. You were offered this job because the vendor knows you through your county position and he may be expecting a financial gain because of your prestige or authority in the county government. And, if you accept the offer, you will be using your position for your own private gain.

Therefore, because of the prohibitions of §3-105 and §3-104, it is my opinion that you may not accept the secondary employment with this vendor.

If you have any additional questions, please feel free to call any time.

Sincerely,

Betsy K. Dawson  
Executive Director