

April 17, 1997

Re: I-97-59

You inquired whether you can participate as president of your community association, in several issues that may involve the Department of Public Works of Anne Arundel County, your employer. The community association intends to:

1. "participate in public forums" and "monitor Anne Arundel County's execution of the [watershed management] Plan's recommendations" ;
2. "participate in public forums discussing potential use of" certain adjacent business property that will be deeded to the County and "lobby for the Community's best interests";
3. "participate in public forums" on the extension of a road and "lobby for" the community's " best interests";
4. "Enjoin Anne Arundel County to implement the. . . watershed management practices recommended" to the county by an outside consultant;
5. "Arrange for the State or County to contract the dredging of one or both Community stormwater detention ponds and the repair of the outfall anti-vortex device."

These goals encompass all but one of the community association's goals for the year that you will serve as president of the association. There is clearly a possibility that the community association may in some of these instances directly oppose the position of Anne Arundel County, your employer.

You advised that you are a maintenance supervisor in the Department of Public Works, charged with the mechanical, electrical and instrument maintenance for 5 water reclamation and 120 pumping stations, primarily in the southern part of the county. Your chain of command includes personnel from both the Department of Public Works and Planning and Code Enforcement. You stated that both the Department of Public Works and PACE will be involved in the implementation of the projects that your community association will be monitoring and possibly opposing. However as an employee, you will not participate in the projects in any way.

The pertinent provision of the ethics law, §3-105 states that:

(b) An employee may not:

(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.

The Commission has previously found that an employment relationship can exist even where a person is not compensated for his work, if other aspects of an employment relationship are present. In this case, there is a duty of loyalty to the association you serve. If the county's position is or becomes adverse to that of your community association, what will your position be? If you must criticize or publicly oppose individuals in your official chain of command, where will your loyalties be? This type of conflict of interest, between community and employer, would impair your impartial and independent judgment.

The prohibition of §3-105(c)(1) applies to "matters in which the county has an interest". In all the projects or "matters" that you have described, the county will have an interest. As the county's interest will be broader than the limited interests of your community, the chances for conflict between the two interests are great. The commission believes therefore, that your representation of the community association in the matters you have described, would be matters in which the county may have an adverse interest to your community association. Unless you can be certain that your community and the county have an identity of interests in these projects, you should not participate as president of your community association in the projects you outlined in your inquiry.

Thank you for your inquiry. If you have any questions, please call any time.

Sincerely,

Betsy K. Dawson,
Executive Director