

April 25, 1997  
Re: I -97-66

You inquired whether you could accept as secondary employment, contracts to design and draw plans for residences, residential additions, renovations and remodeling plans. These plans would in many cases be submitted as part of a building permit application, subject to the review and approval of the Anne Arundel County Permit Office. You stated that your skills in designing and drawing house plans were acquired in private employment prior to your employment by the county.

You are employed by the county as the real estate manager in the Office of Central Services. Part of your responsibilities include negotiating leases between private entities and the county. You are also responsible for renovations to existing county property which may include additions or other structural changes. In these cases, you apply to the county permit office for permits to conduct these renovations.

The applicable sections of the ethics laws are §3-105, prohibiting outside employment where there is a conflict of interest with public employment, and §3-104, prohibiting the use of the prestige, title, or authority of the employee's office for the employee's gain or the gain of another. Section 3-105 prohibits secondary employment where the outside employer is subject to the authority of the employee or the employee's agency (department or office) or where the outside employer is negotiating or has entered into a contract with the employee's agency. In this case, you will be in business for yourself, contracting with private individuals and homeowners. These clients will be subject to the authority of the permit office, which is a sub-agency of PACE. Since you are in the Office of Central Services, your outside employment will not be subject to the authority of your own department. There is also little likelihood that there will be any contracts between the residential homeowners with whom you contract and the Office of Central Services, so §3-105(b)(1) would not apply to prohibit the secondary employment.

More pertinent however, is §3-105(c)(1), which provides that,

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 permit process is a "matter in which the county has an interest". An interest is defined as a "legal or equitable economic interest". It is in the economic interest of the county to ensure that building projects are constructed safely and according to certain standards.

However, the ethics commission has generally limited the application of this prohibition to those employments where the county's interest may be adverse to the interests of the private employer. It is in cases of adverse or opposing interests that the employee's loyalty may be divided. In the present case, if you do not participate directly in the permit process, you will avoid placing yourself in a potentially adverse situation with the county if the permit application

is rejected. Therefore, the commission finds that you may design plans for private clients as long as you do not participate in the permit process on your client's or your own behalf. As long as you are completely insulated from the permit process, this outside employment will not violate §3-105(c)(1).

Another provision that is relevant, §3-104(a) provides that, "An employee may not use the prestige, title, or authority of the employee's office or position for the employee's gain or the gain of another." This section prohibits you from using any special knowledge of county procedures in assisting your private clients or in marketing your services. You may not use your connections with other county employees to further your private interests and you must not obtain publicly available information through any specialized access available to you through your county employment.

The Commission therefore advises that you may design and draw plans for private residences provided that you do not participate in any way in the permit application process and that you do not use your position or your connections to further your private business. Additionally, you must avoid entering a business relationship with any client who may be subject to the authority of your agency, or who is negotiating or has entered into a contract with your agency. This last restriction would include contractors who do business with the Office of Central Services, either through leases with the county or as vendors.

Thank you for your inquiry. If you have any questions, do not hesitate to contact me.

Sincerely,

Betsy K. Dawson  
Executive Director