

April 23, 1997
Re: I-97-79

You inquired whether you could appoint as a member of the Salary Standards Commission, a temporary part-time employee of the Arundel Economic and Community Development Corporation. The Salary Standards Commission is a creature of state law, Article 25A, §5(AA). Its purpose is to establish compensation and other allowances for members of the county council for the term after the one it which it sits. The members are appointed by resolution of the county council.

As I advised you over the phone, a member of the Salary Standards Commission would be a county employee under §1-101(f)(1), as ". . . an individual . . . appointed to . . . the Executive or Legislative Branch of the County; or a member of any County board, commission or similar entity, whether or not compensated. . . ." Under either definition, a member of the salary commission would be an employee subject to the ethics laws of the county.

As a county employee, a member of the commission would be prohibited by §3-105, from engaging in outside employment :

1. with an entity subject to the authority of the employee's agency, board, or commission;
2. with an entity that is negotiating or has entered into a contract with the employee's agency;
3. where the employee would assist or represent the outside employer in connection with a matter in which the county has an interest, except in the course of the employee's official duties; or
4. hold any other employment relationship that would impair the impartiality or independent judgment of the employee.

In the current instance, the AECD is subject to the authority of the County Council in several ways. For example, the county auditor may audit the financial records of the AEDC. The county council must approve the budget of the AEDC. There are also contractual relations between the AECD and the county in the Amended Grant Agreement of July 6, 1993. Although this agreement is signed by the executive branch on behalf of the county, its creation was authorized by the county council and its terms bind the legislative branch as well.

Since the AECD may be considered for some purposes to be a county agency as opposed to a wholly private corporation, the provisions on impairment of independent judgment would still apply. There may be instances in which the AECD and the county council would have adverse interests or positions that could create a division of loyalty in an employee of both agencies. See, for example, in Opinion 85-17, COMAR Title 19A, the Maryland State Ethics

Commission advised that,

We have, however, recognized that in some situations secondary employment with another State agency could present conflict of interest situations that would be barred by the more general impairment provision . . . Particularly, we have held that this prohibition could apply to secondary State employment situations, "where there are clear personal and organizational conflicts intended to be addressed by the Ethics Law that cannot be controlled by the personnel and administrative process."

It is my opinion that there are many possibilities for conflicts of interest in serving as an employee of the AECD and as a member of the Salary Standards Commission, and therefore I would advise you not to make the appointment. Please understand that because of the time constraints imposed by your inquiry, this opinion is based solely on my research without consultation with the full ethics commission.

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

Sincerely,

Betsy K. Dawson
Executive Director