

Anne Arundel County Ethics Commission

Advisory Opinion 98 - 110

Issue: Whether a member of the county council can participate as a volunteer employee in a county agency that is subject to the legislative and budgetary control of the county council.

Background:

The county police department has an aviation branch that includes six helicopters. Four of the helicopters are always operational and two are kept in reserve for parts, although they can be made ready to fly in emergency situations. The helicopters were donated to the county by the National Guard but the county pays for the maintenance of the helicopters. The aviation branch is staffed by two full-time pilots and two part time pilots who have other duties in the department. The police department would like to have volunteer pilots available to serve as needed.

A member of the county council is a qualified helicopter pilot, having served as a pilot in the military. He would like to offer his services to the police department as a volunteer pilot. As a member of the county council, he would also be involved in budgetary considerations and other legislation affecting the police department generally and the aviation branch of the department specifically.

Discussion:

The pertinent provisions of the Public Ethics Law are §3-105(prohibiting certain types of outside employment), and §3-101 and §3-102 (non-participation provisions).

Section 3-105(b)(1) prohibits an employee, including a county council member, from having either an employment relationship with, or an interest in, an "entity" that is subject to the employee's control, or the control of the employee's agency. The Public Ethics Law defines a "business entity" to include ". . . any individual, partnership, corporation, trust, foundation, or organization, whether or not operated for profit, and any other entity, regardless of form." The police department is not an entity *per se*, but is part of the part of the overall government entity in which the county council member is already employed. The ethics commission believes that for the purpose of §3-105, an "entity" includes only non-county government organizations or agencies whose interests may conflict or compete with county government interests. Therefore, although the police department agency is subject to the authority of the county council, it is not an "outside" entity within the context of §3-105.

However, the inquiry does not end here. Section 3-105(b)(2) prohibits any type of employment relationship that would impair the impartiality or independent judgment of the employee. This section covers those employment relationships that may not be technically covered by other portions of the ethics law, but which may nonetheless create actual or even apparent conflicts of interest. (See also, State Ethics Opinion 91-3, COMAR 19A). In the present instance, the ethics commission concludes that there is no inherent conflict between

piloting a helicopter under the supervision of the police department and conducting the business of the county council. As an agency of the executive branch of county government, the police department is not subject to the daily supervision of the county council. The council's legislative authority over the police department, while significant, is not so pervasive as to prohibit the council member's offer of volunteer service.

While the volunteer service is not totally barred by §3-105, other sections of the ethics law may have an impact on the participation by the council member in matters involving the police department or the aviation branch of the police department. Section 3-101(a)(1)(i) prohibits an employee, including a council member, from participating in any discretionary matter in which the employee has an interest. An employment relationship is an "interest" and the ethics commission has found that in certain cases, even a noncompensated volunteer can be considered to be in an employment relationship. (See AO-96-104). For example, where the volunteer receives a benefit, an "interest" is created. In this case, the council member can accumulate flying hours at little or no cost to himself. This benefit creates an "economic interest". This provision would not prevent the council member from volunteering his services to the police department but it would prohibit his participation in legislative matters related to his volunteer service.

Section 3-102, which applies only to county council members, mirrors the provisions of §3-101(a) by prohibiting a member from voting or attempting to influence any legislation in which that member has a "personal interest". As a volunteer helicopter pilot for the police department, the member would have a "personal interest" in any legislation involving that branch of the police department. Like §3-101, this provision would not prevent the council member from participating as a volunteer, but would bar his participation in legislation affecting at least the helicopter branch of the police department.

Conclusion:

As volunteers themselves, the members of the ethics commission encourage volunteerism in county service and try to balance the need to promote ethical government with the need of government to promote the general welfare of the county through volunteerism. With these goals in mind, and after reviewing the pertinent provisions of the Public Ethics Law, the ethics commission concludes that the county council member may volunteer his services to the police department as a helicopter pilot. However, the provisions of §3-101 and §3-102 require that the council member generally refrain from participating in any legislative matters affecting the helicopter service, including budgetary, personnel, and other issues, unless an exception is permitted pursuant to either §3-101(c) or §3-102(d). In both those provisions, the ethics commission may determine that participation, after full disclosure of all pertinent facts, will not result in an actual conflict between the private or personal interests of the council member and his official duties as a legislator. Moreover, these participation restrictions do not preclude the council member from participating in the overall budget process or voting to approve the general budget.

Date: _____

By: the Anne Arundel County Ethics Commission