

Anne Arundel County Ethics Commission

Advisory Opinion

98 -152

Issue:

Whether county employees may be paid by film companies to appear in movies or other films, while in uniform and/or operating county equipment.

Background:

On occasion, film companies come to the county to film scenes for movies. On at least one occasion recently, the film company called the county fire department for permission to use fire department apparatus in the filming of the scenes. Since the fire department rules require that only fire department personnel can operate county fire equipment, the film company requested permission to "hire" county fire personnel to operate the equipment. The county employees who participated in the filming of this movie, did so while off-duty, and received no compensation from the fire department for their participation. On the informal advice of the ethics commission, they received no compensation from the film company.

Discussion:

The section of the Public Ethics Law that pertains to this situation is §3-104(a), which prohibits an employee from using the prestige, title, or authority of the employee's office or position for the employee's private gain or the gain of another. The ethics law does not cover the use of county equipment; however, since only county personnel can operate county equipment, this section of the law covers most situations in which county equipment is used.

The ethics commission has previously concluded that fire department apparatus cannot be used to benefit private interests unless there is public purpose served as well. See, AO 97-162. In the case of using the county fire department in a movie, the public purpose may be to advertise or promote the county or to extend the good will of the county to encourage business development. These are both legitimate public purposes, and unless there is competition between film companies for the use of county equipment, or the filming interferes with the public safety function of the fire department, the potential benefit to the county outweighs the financial gain to the film company.

The limited use of fire equipment by business and other private concerns, may also constitute "usual and customary constituent services by an elected official or the staff of an elected official". In this case, the staff of the elected official would be the chief of the fire department, a member of the staff of the county executive. The chief presumably would approve

the use of the equipment and personnel. Constituent services are permitted under §3-104(b), as long as there is no "additional compensation" received.

In operating county owned or maintained fire apparatus, whether as part of customary constituent services or not, fire department personnel are acting as county employees. Indeed, they are the only personnel with the authority to operate this equipment. They are operating this equipment for a legitimate public purpose and for the benefit of the county. The right to wear a uniform is also part of the prestige and authority of the position of the fire department personnel. Since they are acting on behalf of the fire department, there are no issues of secondary employment under §3-105. And, since they are acting on behalf of the fire department, their compensation, if any, can only come from the fire department. Whether the fire department ought to compensate its employees in this situation is not a matter for the ethics commission to consider.

The ethics law does not prohibit the film company from reimbursing the fire department for fuel or wear and tear on the vehicles, assuming that the fire department has established a general policy for such items. The ethics law would not prohibit an *unsolicited* gift from the film company to the fire department, as long as the gift, of money or equipment, would benefit the public, as opposed to individual fire department personnel.

Conclusion:

Although county personnel may operate county equipment in the filming of motion pictures, subject to the approval of the chief of the fire department, they may not receive compensation for this service from the film company. In operating this equipment, whether in uniform or not, the employees are acting as county employees, and on behalf of the county, and are not engaged in secondary employment.

Date: _____

By: the Anne Arundel County Ethics Commission