

Anne Arundel County Ethics Commission

Advisory Opinion 98 - 78

Issue:

Whether an employee of the Department of Aging can own and operate a licensed senior living facility in the county, when the employee's official duties including providing information to senior citizens as to the availability of services, including senior living facilities, and where the employee also assists the clients in obtaining these services.

Background:

The Department of Aging's Senior Information and Assistance section provides information on the availability of various services to senior citizens in the county. Among the information it provides is a list of available senior housing, including nursing homes, licensed assisted living facilities, and affordable apartments. This section of the department also assists its senior clients in filling out the eligibility forms required to obtain these different services.

One of the employees in the Information and Assistance section is also the owner and operator of a small residential facility for seniors. This facility is on the list of available senior housing that is provided to senior citizens. The employee's name appears on the list as the owner of the facility. The employee provides this list to clients of the Department of Aging as part of the employee's job duties.

The policy of the Department of Aging is to avoid making recommendations as to the merits of particular facilities or service providers.

Discussion:

The first provision of the ethics law that is relevant to this issue is §3-105, which prohibits county employees from accepting certain types of outside or secondary employment.

An employee may not be employed by or have an interest in an entity that is subject to the authority of the employee's agency or that has a contractual relationship with the employee's agency. As the owner and operator of a senior housing facility, the employee in the instant case, does have an interest and an employment relationship in an entity. However, this particular entity is licensed by the state and is not subject to any regulatory oversight by the Department of Aging. The department's policy is to include all properly licensed senior residential facilities on the list that it makes available to department clients. There is no contractual relationship between any listed facility and the department.

Even where there are no regulatory or contractual issues involved in the outside employment, §3-105(b) includes a more general provision that prohibits ". . . any other employment relationship that would impair the impartiality or independent judgment of the employee." This prohibition covers conflicts that are neither contractual nor regulatory, but which can arise from some other significant relationship.

As an senior information and assistant specialist, the employee is in a particularly favorable position to meet and develop close working relationships with potential customers of the employee's private residential facility. Although department policy discourages employees from recommending particular facilities or service providers, there is ample opportunity to do so. And the employee will have a potentially large choice of customers from which to pick and choose. The commission is not suggesting that the employee in question would violate department policy to the employee's advantage. On the contrary, the commission believes, based on experience, that most county employees exercise a high level of integrity in the workplace. However, it is the possibility for a conflict of interest that gives rise to the appearance of a conflict of interest.

An apparent conflict of interest will also develop when a client discovers that the helpful county employee and the senior residential service provider on the list of available facilities are one and the same. Knowledge of this connection may affect the client's choice of a residential facility, either because of the relationship that develops between the client and the employee, or because of a belief by the client that choosing the employee's facility will give the client an advantage in acquiring other services offered by the county.

Dual employment in this instance also presents issues under §3-104 of the ethics law, which prohibits an employee from using the prestige or authority of the employee's position for a private financial benefit. The employee has an excellent opportunity to promote a particular service provider among the users of this service. There is no viable way to insure that this opportunity will not be taken. In the event that a client of the Department of Aging were to become a resident of the employee's facility, how could the appearance of a conflict of interest be avoided?

Conclusion:

The ethics commission concludes that the employee in the Information and Assistance section of the Department of Aging is prohibited from operating a licensed senior residential facility by the provisions of §3-105(b)(2) and §3-104 of the ethics law. This type of outside employment creates the appearance of a conflict of interest because of the opportunities for self-promotion on the job and the use of the prestige of the employee's position. This advice does not address the propriety of operating a residential facility for clients with whom the department has no connection and it does not address the possibility that the employee could be transferred to another job within the department which will avoid these conflicts.

Date: July 1, 1998

By: the Anne Arundel County Ethics Commission