

Anne Arundel County Ethics Commission

Advisory Opinion

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Issue:

Whether a police officer can operate a private security business, hiring other off-duty county police officers, to provide private security services to private businesses and communities in the county.

Background

Under current practice, many county police officers are employed during off-duty hours in various types of secondary employment. The types of work done by these officers runs the spectrum of employment opportunities, but in many cases, these officers serve as private security guards for residential communities, building sites, or commercial businesses. The secondary employer may be a community association, a developer, or a business owner. In some of these types of secondary jobs, the officers use their personal patrol vehicles (PPVs) and wear their uniforms. Most of these jobs are acquired through informal communications between a potential employer and a police officer. Police officers will often pass the information around among themselves or refer the employer to another officer by name. The police department stated that it does not participate in any employment referrals but simply advises potential employers who call the police department that they must make arrangements on their own.

The police department has developed extensive directives governing secondary employment. Whenever a police officer seeks an off-duty job, the officer must obtain the prior approval of the supervisor and the appropriate deputy chief. When the request is approved, it is valid for one year and the officer must request a renewal of the approval every year thereafter, or whenever the officer changes jobs. Additional approval is required for the use of a uniform or PPV. The guidelines require an officer using a PPV for secondary employment to keep records of mileage and to reimburse the County according to a specific formula. The guidelines also establish criteria to prevent conflicts of interest between public and private duties.

The department requires that in certain situations, even off-duty officers working in secondary security jobs must respond to police calls. The type of response required depends upon the situation, whether the officer is in or out of uniform and whether the PPV is being used. The guidelines also require that officers submit incident reports for any incident that occurs during the secondary employment that may involve the officer's law enforcement duties.

Finally, the police department requires that any officer engaged in security work for secondary employment obtain from the private employer an agreement to indemnify the county for any liability that may arise from the officer's private employment.

Discussion:

The issues of secondary employment presented by these facts involve §3-105 and §3-104 of the Public Ethics Law. Section 3-105(b)(1) prohibits an employee from being employed or having an interest in an entity subject to the authority of the employee's county agency, or that has entered into a contract with the agency. Every citizen, community, and employer in the county is subject to the authority of the police department in some sense, but obviously to apply such a broad interpretation of the law would be to preclude an off-duty officer from engaging in any secondary employment. The Commission believes that private employers hiring off-duty officers are only subject to the authority of the police department within the meaning of §3-105(b)(1) when the employer's business operates under particular rules or regulations that may involve the police department's authority in a specific way.

The Commission believes that in general, residential communities and most commercial establishments are not subject to the authority of the police department in any specific way and that the prohibitions of §3-105(b)(1) are not applicable to private security work for these types of employers. Therefore, the Commission concludes that the Public Ethics Law permits off-duty police officers to work as private security guards under certain circumstances. As long as there is no apparent conflict between official duties and secondary employment, and as long as there is no apparent competition between the private employer and the police department, the secondary employment is permissible. In fact, in most cases, the police department benefits by the presence of well trained private security guards at community and business locations.

Section 3-104 prohibits an employee from using the prestige of the office or position for the employee's own personal gain or the gain of another. The right to wear a police uniform or operate a police vehicle is available only to police officers - it is part of the prestige, authority or title of the position. If the uniform and vehicle is used by the officer during off-duty hours, to assist the officer in performing secondary employment, the officer is using the prestige of the office for the officer's private gain. Off-duty officers are permitted to wear their uniforms and use their patrol vehicles because the benefit or gain that accrues to the police officer and the private employer is of the same nature as the benefit that accrues to county citizens at large. The private employer pays a price for this benefit that the public does not pay.

On the other hand, a private security business that employs off-duty police officers would be receiving a private financial benefit from the use of other officers' uniforms and patrol cars. And there would be a perception on the part of the public that this business is being endorsed, supported and encouraged by the police department because of its use of off-duty officers and its ownership and management by an off-duty officer. Competing private security businesses would not be so favored. This is the type of gain that §3-104 seeks to prevent.

Another problem with the type of security business in question, is that the off-duty officer/ manager of such a firm would acquire employees - other police officers - from contacts acquired on the job, during county time. Section 3-104 prohibits the use of county contacts to develop or promote a secondary employment. This prohibition applies equally to customers or clients acquired through the job. In effect, the operator of the private security firm would be

using the county employment as a marketplace for selecting both employees and clients and would have quite an advantage over any competitors.

Section 3-105 presents other issues affecting the type of business at issue. Specifically, §3-105(b)(2) prohibits an employment relationship that would impair the impartial or independent judgment of the employee. The Commission believes that there are several ways in which the operation of a private security firm would adversely affect the impartial and independent judgment of a county police officer. In the first instance, the potential competition created between officers in the department for job opportunities with this firm would affect on the job relationships. Acquiring potential clients for private security services would also involve competition between these same officers. Potential clients who contact police officers would be the employees of the private firm to the private firm, and not to other officers employed by the department. The resulting competitiveness and tension that could develop in the workplace could conceivably impair the impartial and independent judgment of every officer either employed by the security firm or seeking employment with the security firm.

Section 3-105 (b)(1) prohibits an employee from being employed by or having an interest in an entity that is subject to the authority of the employee's agency. The private security business at issue, operating as a middleman between its customers and off-duty officers, would be subject to the authority of the police department. The determination whether a given officer can engage in secondary employment is primarily in the hands of the police department, subject to review by the ethics commission, and is not within the discretion of the private employer. The same rule applies in determining whether an off-duty officer can use a PPV or uniform in the secondary employment.

Another problem under §3-105 is the rule that an employee cannot assist or represent a person in connection with a matter in which the County has an interest. A private security firm employing off-duty officers would be required by police regulations, to sign an indemnification agreement with the county for every police officer that it employs. In the event that a legal dispute would arise involving the terms of the indemnity agreement, a private security firm (and its police officer/owner) would be representing an interest that may be adverse to the interests of the police department.

Conclusion:

The Commission concludes that the ownership and operation of a private security firm by an off-duty police officer employing off-duty county officers would violate §3-104 and §3-105 of the Public Ethics Law.

Date:

By: the Anne Arundel County Ethics Commission