

## Anne Arundel County Ethics Commission

### Advisory Opinion

99-158

#### **Issue:**

Whether a county employee may own a vending machine business that supplies vending machines to the agency of the county where the employee works.

#### **Background:**

Several years ago, a county employee and the employee's spouse purchased an ongoing vending machine business. At that time, the private business had several vending machines located in the agency where the employee was working. After purchasing the business, the vending machines stayed in their original locations, where they remain to this day. The spouse of the employee is the majority stockholder and handles most of the stocking of the machines. The employee occasionally helps out, but never participates in the vending machine business during working hours.

County government agencies are housed in many facilities throughout the county. Vending machines from different companies are located in many, but not all of these facilities. A few of the vending machines agreements have gone through the bidding process, but generally, the process of acquiring a vending machine is conducted more informally, between the agency representative, often the primary supervisor at the specific facility, and the individual vendor.

In most cases the vendor will provide a percentage of its profits back to the agency that contracts for the placement of the machines. Since many county facilities are equipped with kitchens and employees frequently pool resources to purchase food and beverages, there is little interest or competition among vendors to locate machines in most county facilities. It should be noted that snack and food vending machines of the type involved in this discussion, are licensed by the state, not the county.

#### **Discussion:**

The Public Ethics Law, §3-105 prohibits an employee from being employed by, or having an interest in, an entity that is subject to the authority of the county agency with which the employee is affiliated. The employee in this case, has both an ownership interest and an employment relationship with the vending machine business that supplies the employee's own agency facility. These machines can be ordered removed by the agency head, the employee's immediate supervisor. Although there have been no apparent problems with the operation of the machines, the agency head would be responsible for monitoring and resolving any problems that would arise. If for example, another agency employee, or a member of the public, were to damage a machine, or be injured by a product purchased at a machine, the department head

would be required to intervene.

There may be other vendors interested in placing machines in this agency's buildings. If they approached the department head about the business possibilities, what would be that person's response? Perhaps there are vendors who would not even inquire about doing business with the county, knowing that an "insider" supplies machines to the agency.

These hypothetical situations may never occur. However, should problems arise, the department head would be in the unenviable position of having to choose between the interests of the department and the public on one hand, and the interests of the employee-vendor who is subject to the head's supervision. It is this potential for a conflict of interest, no matter how remote, that the ethics law seeks to avoid.

**Conclusion:**

The ethics commission advises that §3-105(b)(1) prohibits the employee from having either an ownership interest in, or an employment relationship with, a vending machine business that supplies machines to the employee's agency. Even if the employee's spouse becomes the sole operator and employee of the business, a contract between the agency and any vending company should be pursued through the county's bidding procedures, in order to avoid any appearance of favoritism or other conflict of interest. The employee may continue to conduct this business as long as the machines are removed from all facilities subject to the control and authority of the employee's agency.

Date:

By: the Anne Arundel County Ethics Commission