

Anne Arundel County Ethics Commission

Advisory Opinion

99-176

Issue:

Whether a police officer may be employed by, or have an ownership interest in, a restaurant with a class H liquor license, that is located in the county where the officer is employed.

Background:

A county police officer and the officer's spouse are the owners of a restaurant located in Anne Arundel County. The restaurant has a class H liquor license, which under the Rules and Regulations adopted by the Board of Liquor License Commissioners for Anne Arundel County, provides for the consumption of alcohol on the premises of the business only, and requires the operation of a kitchen and service of hot meals at least twice a day. The police officer's spouse is the manager of the restaurant, which employs about three or four other employees. The spouse plans to become the holder of the preexisting liquor license. The facility owned by the officer and spouse includes several tables and chairs for meal service, and a bar that is situated opposite shelves where alcohol is prominently featured. Liquor sales provide a significant part of the restaurant's gross receipts.

The police officer is the vice-president and treasurer of the corporation that owns the restaurant. The restaurant is the corporation's sole asset. The officer's responsibilities with the restaurant will include bookkeeping and clerical work that can be done at the officer's home, and not at the business. The officer will occasionally go onto the premises to pick up papers, and monies received, and will talk to employees as needed, but the officer will not have any responsibility for the day to day operations of the restaurant. The officer is not paid a salary, paycheck, bonus, or gratuity for performing work for the business.

Discussion:

The Public Ethics Law, §3-105(b)(1) provides that an employee "may not be employed by, or have an interest in, an entity subject to the authority of the employee or the authority of the County agency. . . with which the employee is affiliated." A county police officer, being employed in the executive branch of the county, is an employee subject to the provisions of the ethics law. §1-101(f)(1). The question to be considered by the ethics commission, is whether a restaurant with a class H liquor license is an "an entity subject to the authority of. . ." the employee, or the employee's agency.

In an obvious sense, every person and every entity in the county is subject to the authority of the police department. However, the commission believes and has previously stated, that the ethics law does not seek to prohibit all secondary employment by police officers. See,

AO-98-91. It is not the general obligation to obey the laws that subjects a person or entity to the authority of the police department in the way meant by §3-105(b)(1). There must be some specific or frequent authority exercised by the police department over a particular type of business that triggers the prohibition in the ordinance.

The sale and consumption of alcohol is regulated in part by the county liquor board. In its Rules and Regulations, the board requires that licensees cooperate with members of the police department, that they make certain records available to the police department, and that they comply with all requirements of the police department. See Chapter 3, Standards of Operation. The Rules also enumerate a number of prohibited practices, from selling liquor to minors to permitting gambling, the use of narcotics, or entertainment of a sexual nature in places holding liquor licenses. See Chapter 4. The police, along with the inspectors and commissioners of the liquor board have the responsibility to ensure that these rules are enforced.

The sale and consumption of alcoholic beverages present specific challenges to the police department. The significant problems created by drunk drivers and minors in possession of alcohol, for example, are a big part of what the police departments handle every day. On occasion, these problems start at the location of the businesses that hold liquor licenses, whether they be class H restaurant licenses, class D tavern licenses, or class A liquor store licenses. Businesses that serve or sell alcohol involve the police department to a much greater extent than, for example, businesses that sell clothing, hardware, toys, or ice cream. The commission believes that the authority exercised by the police department over a restaurant with a liquor license exceeds the general authority to which all citizens and businesses are subject. For that reason, the commission concludes that a restaurant that sells and serves liquor is an entity subject to the authority of the police department. Therefore, ownership of, or employment with, a restaurant and bar by a county police officer violates §3-105(b)(1) of the ethics law.

The fact that the officer receives no compensation from the work performed for the business is not dispositive. As far as the ethics law is concerned, an employment relationship can exist if there is a significant duty of loyalty, regardless of whether compensation is paid. It is the duty of loyalty that creates the potential conflict of interest between private interests and official duties. While payment of wages certainly contributes to the sense of loyalty that an employee holds toward a private employer, it is not the only factor in the relationship to be considered. The officer, as one of two major stockholders, will receive that payment in the form of the business profits. If it is not paid out in wages to the officer as an employee per se, it will be paid to the officer in the form of profits.

Contrary to the assertion of the officer, an ownership interest in a business that is subject to the authority of the police department is not comparable to a shareholders' interest in a beer or liquor manufacturing company. A shareholder has virtually no impact on the way the manufacturer operates its business or markets its product, and the police department has no specific or regular authority over the conduct of that business. The business involved in this instance is one in which the police officer can exercise significant control if the officer so chooses.

The ethics commission also concludes that §3-105(b)(2) is relevant in this instance. This section prohibits an officer from having any employment relationship that would impair the employee's impartial and independent judgment. The commission believes that the officer would have a conflict between protecting the business and enforcing the laws. If the restaurant were investigated for liquor law violations, the officer would be inevitably caught in the middle, as would fellow officers responsible for the investigation. While these possibilities may be remote, it is the possibilities of a conflict of interest that the provisions of §3-105 seek to prevent.

Conclusion:

The ethics commission advises that §3-105 prohibits a county police officer from having an ownership interest in a restaurant with a class H liquor license, or from working on behalf of the restaurant, regardless of whether the officer receives compensation directly for this employment. In reaching its decision, the commission did not consider the rules of the police department, because those rules are outside the commission's jurisdiction. The provisions of the Public Ethics Law establish minimum standards of conduct for all employees, and where a county agency or department adopts and enforces more stringent rules, the ethics commission will generally not interfere.

Date: _____

By: the Anne Arundel County Ethics Commission