

Anne Arundel County Ethics Commission

Advisory Opinion

99-197

Issue:

Whether an employee of PACE may sit as a member of the board of directors of a private non-profit entity that was created to participate in the future development and preservation of a portion of Anne Arundel County.

Background:

An employee with the Agricultural and Woodland Preservation Program of the Department of Planning and Code Enforcement, was asked to sit on the board of directors of the South County Exchange, a private non-profit organization formed as a "nonadvocacy group dedicated to the sustainability of South County's unique qualities." Prior to the group's formation, the employee participated, in her official capacity as a county employee, on the Local Organizing Committee, a committee that organized and prepared for the visit of an international "Exchange Team". The team was formed from a group of volunteers from various countries who participate in intensive week-long studies of specific areas, and make recommendations on conservation and development issues. The South County Exchange Team's report and recommendations were published as part of "*The Countryside Exchange in the Chesapeake Bay Watershed*", a booklet printed under the sponsorship of several non-profit organizations, including the Alliance for the Chesapeake Bay, the Chesapeake Bay Program, and others.

The creation of the South County Exchange is the result of one of many recommendations made by the Exchange Team. Some of these recommendations are general or conceptual, while others are more specific. Examples of the recommendations that are relevant to this inquiry are as follows:

- ▶ "Once the Small Area Planning Committees have completed their work, consider establishing Small Area Planning Commissions with on-going staff support from PACE and tying into the staff teams PACE has established to serve each region of the county. . . "
- ▶ "Once land use maps are created and adopted as part of the Small Area Planning process, consider revising County zoning and other growth management measures to make them easier, less costly, and more flexible to implement. . . "
- ▶ ". . . South County might benefit from enacting additional zoning provisions which delineate "growth boundary areas" detailing geographically where development can and cannot occur. . . Another example may be to create a "natural resources overlay district" which sets

special conditions in addition to zoning provisions for places deemed of distinct value. Also consider supporting enactment of the Right-to-Farm Bill, giving farmers greater control as neighboring lands are developed for non-agricultural purposes."

- ▶ ". . .Communities should identify the need for open space as part of the small area planning process. The potential for making such space available in partnership with private landowners should be actively explored. This could take the form of an enhanced version of Program Opens space increased through: levying more tax on development above a certain threshold where waivers are required and upon condition that the funds yielded are used to support land purchase (in fee simple or easement) in the same community . . ."
- ▶ "Secure commitments for adequate, continued funding from federal, state and county government in order to be able to plan and implement the strategic easement program. . . "
- ▶ "Adopt the Right to Farm Law in the County. *'Farms surrounded by subdivisions won't survive. There are no incentives for these farms to survive.'*"
- ▶ "The County should be asked to consider providing adequate funding so that an analysis of the cost savings and cost accounting of rural versus suburban landscape may be undertaken.. . . "

The employee's duties with the Agricultural and Woodland Preservation Program in PACE include efforts to establish voluntary agricultural and woodland districts in the county. According to the General Development Plan, the designation of a district requires that the property be maintained as an agricultural or woodland use for at least 10 years. (GDP, Part II, Page 55). Another goal of PACE, through this program, is to purchase conservation easements in order to preserve up to 20,000 acres of farm and forest land in the county.

Discussion:

It is apparent that the South County Exchange, despite its self-proclaimed status as a "non-advocacy group" is at least for some purposes, precisely that. Among its intentions are to develop ongoing relationships with the county, primarily through PACE, that will help the organization achieve its goals. The group will be considering significant changes to the zoning laws. There may be proposals coming from the group that will affect taxes or provide county-based incentives to preserve rural and farm properties. These goals are legitimate and the recommendations proposed to promote the goals of the South County Exchange or also legitimate. However, there is a difference between developing a close working relationship with PACE on the one hand, and having a PACE employee serve in a fiduciary capacity with the

organization itself.

Section 3-105(b)(2) prohibits any employee from holding any other employment relationship that would impair the impartiality or independent judgment of the employee. The first issue in this inquiry, is whether the PACE employee's membership on the board of the South County Exchange would constitute an employment relationship.

The ethics commission has previously determined that non-compensated membership on the board of a private entity can constitute an employment relationship because of the nature of the obligation toward the entity. *See* AO-96-111, 99-9, 99-17. Board members are required to pursue the goals of the entity, which requirement imposes a duty of loyalty to the entity. Even in the absence of a regulatory or contractual relationship between the entity and the employee's county agency, this duty of loyalty may impair the impartial and independent judgment of the employee.

In this instance, it is clear that the county and the South County Exchange share a fundamental belief that agricultural and woodland properties are an important asset and should be preserved. It is not clear that the goals and means to achieve them are identical, and without the possibility of disagreement and conflict. PACE is interested in the well-being of the county as a whole, where the South County Exchange is almost exclusively concerned with the future of South County. It seems inevitable that the two organizations will assume adversarial or competitive positions on occasion. County employees should not put themselves in the position of having to choose between loyalties. *Accord*, Opinion 83-13, State Ethics Commission, *Code of Maryland Regulations*, Title 19A.

There have been occasions when county employees have been permitted to sit on the boards of private entities. If the entity's purpose is unrelated to the employee's county duties, and the employee will be serving in a purely personal capacity, there is no prohibition against the service. Or, if the entity was created to assist the county agency in the pursuit of its public purpose, the employee may sit, in an official capacity, as a member of the board. In the latter case, the employee serves by virtue of the employee's government position, and it is absolutely clear that the employee represents only the county's interests. Upon termination of employment with the county, the membership on the board also terminates. Neither of these circumstances exists in the present case. Here, the PACE employee is being asked to serve as a board member of the South County Exchange in a personal capacity, because of the employee's county position. The intermingling of personal and professional interests is not permitted.

Section 3-105(c)(1), prohibits an employee from assisting or representing an entity in connection with any matter in which the County has an interest, except in the course of the employee's official duties. Obviously, employee, as a member of the board, would be required to do just that. For these reasons, the commission concludes that this provision also bars the employee's participation as a member of the board of the entity in question.

Conclusion:

The ethics commission advises that §3-105(b)(2) and (c)(1) of the Public Ethics Law prohibits an employee with the Agricultural and Woodland Preservation Program in the Department of Planning and Code Enforcement from serving as a member of the board of directors of the South County Exchange. It would also be inappropriate for an employee of PACE to sit on the board in an ex officio capacity, since the South County Exchange was created to further the group's preferred vision of the future South County. While its goals may be shared in large part by the county government, the entity will develop its own agenda and priorities, which may at times, conflict with the goals and priorities of the county. This opinion does not address possible issues raised by §3-104, prohibiting the use of the prestige of office for the benefit of another, since the employment is clearly prohibited under the provisions cited.

Date:

By: the Anne Arundel County Ethics Commission