

# Anne Arundel County Ethics Commission

## Advisory Opinion

99-9

### Issue:

Whether the community services representative, an assistant to the County Executive, can continue to serve as the treasurer on the board of the Opportunity Industrialization Center, a private non-profit organization that provides training and job placement services to people with low income.

### Background:

One of the assistants to the county executive serves as a community service representative. The duties of this assistant include troubleshooting constituent concerns and representing the county executive at community meetings. For some time prior to accepting this position with the county government, the assistant has served on the board of a private non-profit corporation called the Opportunity Industrialization Center (OIC). The assistant has been serving as the treasurer of the organization.

For several years, the OIC has been the recipient of a grant from the county of about \$25,000. The grant is administered by the Office of Human Services, and is designated for the specific purpose of paying the rent for the OIC office facilities. The grant funds are paid directly to the landlord of the property leased by the OIC. The OIC has no discretion in the use of this grant.

The Office of Human Services and the community services representative communicate on occasional matters of mutual concern involving citizen or community issues, but they generally have different functions and duties.

### Discussion:

Several provisions of the Public Ethics Law are relevant to this inquiry. The first provision, §3-105(c)(1), provides that:

An employee may not be employed by any person or undertake on behalf of any person to assist or represent that person in connection with a matter in which the County has an interest, except in the course of the employee's official duties.

The Public Ethics Law is to be liberally construed to accomplish its purposes. § 1-102(c). Under this construction, an employment relationship can exist where there is no compensation involved. It is the nature of the relationship, and not the payment of compensation that determines whether an employment relationship exists. Specifically, the ethics commission

looks at whether the activity expected of the employee could create competing or conflicting interests with the employee's official county duties. In this case, the assistant to the county executive has no responsibilities in applying for, lobbying for, or dispersing funds from, any grant received by the OIC from the county. The assistant's relationship with the private organization does not create any competing loyalties with any county duties, and is therefore not the type of employment relationship that is contemplated in §3-105. And since the assistant has no involvement in the application or awarding of the grant, and has no discretion in determining how it is used, the assistant is not representing an organization *in connection* with a matter involving the county's interest. There is no other provision of §3-105 that applies to this situation.

### **Conclusion**

The ethics commission advises that the community service representative may continue to serve on the board of the OIC without violating the prohibitions against certain types of secondary employment set forth in §3-105. Should situations arise in where the OIC and the county have matters of mutual concern, §3-101(a)(1)(i) and (a)(2)(iii) would prohibit the employee from participating in those matters on behalf of either entity. And under §3-104(a), the employee must avoid the use of the employee's county title on any stationary or in any literature for the OIC that may be used for fundraising or lobbying. The employee's title may be used to identify the employee, or as part of any brief biographical description of the employee, but it may not be used to imply that the employee is acting in an ex officio capacity for the organization or that the county is endorsing any OIC activities.

Date: \_\_\_\_\_

By: the Anne Arundel County Ethics Commission