

November 29, 1999
Re: IO-99-194

You inquired whether your environmental consulting firm could retain a member of the Anne Arundel County Council to act as a consultant to market your services to land developers in the area. You indicated that your inquiry is hypothetical, so I am assuming that there is no councilmember waiting to sign a contract with your firm at the present time. The Anne Arundel County Charter permits, but does not require, that the ethics commission respond to inquiries from people who are not employees of the county. Section 1001B(f). It is not the usual practice of the commission to do so. However, because of the interesting nature of your question, the commission decided that it was in the best interests of the public to respond promptly.

There are several problems raised by your inquiry. Under §3-104(a) of the Public Ethics Law, an employee (which includes an elected official), may not use the prestige, title, or authority of the employee's office or position for the employee's private gain or the gain of another. If a council member were to make use of the title of the office, either directly or indirectly, to attract clients to your firm, the council member would be violating this provision. A council member would also violate this provision by making commercial use of knowledge acquired in an official capacity. Land developers often have business with the county council, and it would be in their best interests to hire the environmental consulting firm that hires the council member. The council member might then feel compelled to respond favorably to legislative proposals suggested or promoted by those developers.

Another, and more compelling provision of the ethics law, §3-105(c)(1), prohibits an employee from assisting or representing a private employer in connection with any matter in which the county has an interest, except in that employee's official capacity. Obviously, the county has a significant interest in land development, from the subdivision permitting process through the home inspections. It is a lengthy process during which time various agencies of the county government and the land developer's team are intimately intertwined.

Section 3-102 prohibits a council member from participating in the legislative process if the council member has a personal interest in the legislation. If for example, the council member has a direct interest in an enterprise that would be affected by the council member's vote on legislation, or, if the member benefits financially from a "close economic association" with an entity that will be impacted by the legislation, the council member cannot participate.

The arrangement you propose presents many opportunities for actual conflicts of interest between the official duties and the personal financial interests of an elected official. And, it is hard to imagine a situation that would create a greater appearance of a conflict of interest than an elected official pursuing the interests of land developers within that official's own government jurisdiction.

Therefore, it is my opinion that the hypothetical consulting arrangement that you described would be either prohibited by several sections of the Public Ethics Law, or would interfere with the primary duties of the elected official involved. Thank you for your inquiry. Please call if you have any other questions.

Sincerely,

Betsy K. Dawson

Executive Director