

June 1, 1999  
Re: IO-99-96

You inquired whether it is a violation of the Public Ethics Law for an employee to use sick leave for the purposes of working for a secondary employer, and whether an environmental inspector may engage in secondary employment as a laborer, with a private employer, on property under development that will be subject to an environmental inspection. You indicated that two environmental inspectors were involved in this employment; that they were cutting grass for a subcontractor who was hired for that purpose. You indicated that landscaping services, including grass maintenance, play an important role in the stabilization of the grounds in the development. One of the inspectors is charged with inspecting properties for compliance with grading, and sediment and erosion control. The other employee is a stormwater management inspector. They both are employed by the county in the specific department that will at some point, inspect this development for compliance with county environmental standards. It is not clear that either of these employees will themselves, be involved in the inspection of this development, but the fact that their department is charged with this responsibility is the relevant factor in this situation. You further indicated that the spouse of one of these employees owns the landscaping business that contracted to do the lawn mowing for this development, so the two county employees were in fact, working for the spouse of one of them.

The first question, about the possible abuse of sick leave, is probably not an ethics issue. Even if it were, the ethics commission generally refers issues involving personnel matters to the Office of Personnel for resolution. The second question, about the propriety of the secondary employment raises questions under §3-105 and §3-101 of the ethics law. Section 3-105 prohibits a county employee from engaging in secondary employment with a private employer that:

1) is subject to the authority of the employee's agency, or is a party to a contract, or is negotiating a contract involving that agency; 2) would impair the impartiality or independent judgment of the employee; or 3) would involve matters in which the county has an interest.

The first of these prohibitions would probably not apply in the instant situation unless the landscaping service that employs these county inspectors is subject to the regulatory authority of PACE. In the circumstances you describe, it would appear that the landscaping service is subject only to the authority of the contractor for the development.

The second prohibition is probably applicable in the present case. A subdivision developer must undertake certain efforts to control erosion and sediment. Some of these efforts will include landscaping and lawn maintenance. A developer may be more inclined to choose a landscaping service that employs county inspectors to fulfill this part of the developer's obligation. The developer will reasonably expect that the county inspectors who work for this landscaping service will profit by this extra employment and will in turn, be grateful to the developer. It would follow that these same inspectors - or their coworkers - would bear this choice of landscaping service in mind when called upon to inspect the development for compliance with county environmental regulations. This conclusion is even stronger if the landscaping service is owned by the spouse of a county environmental inspector. Therefore, this

secondary employment would impair the impartial and independent judgment of the county employee.

For these same reasons, a county inspector whose spouse is employed by the developer of a project that will be inspected by the county may not participate in the inspection. Section 3-101 prohibits a county employee from participating in any matter in which the employee's spouse has an interest. A spouse who is employed by the developer, or the developer's contractor, has an interest in the outcome of the inspection. A successful inspection, particularly if it is conducted by the spouse, may well lead to future contracts with this or other developers.

The secondary employment you describe also creates a significant perception of a conflict of interest, because the dealings between a developer and the county must be conducted at arms-length and they must appear to be conducted in this way. The relationship you have described, where a county inspector, working for a spouse, is thereby furthering the interests of the developer, will not appear to be a relationship based upon either independent or impartial judgments of that employee.

You have also stated that you have disciplined the employees involved in this incident. Therefore, in the absence of a complaint filed by you, the ethics commission will take no further action at this time. However, if the secondary employment continues, or if the inspector participates in any inspection of property where the spouse is employed in the landscaping of that property, the commission may consider taking additional action to enforce the ethics laws.

Thank you for your inquiry. If you have any additional questions, please call.

Sincerely,

Betsy K. Dawson  
Executive Director