

August 22, 2000  
Re: IO-00-132

You inquired whether you may accept secondary employment with a private law firm, making monthly presentations to groups, similar to the presentations you make for the Department of Aging. You are a merit employee with the department of aging and are subject to the provisions of the Public Ethics Law, Article 9, of the Anne Arundel County Code.

The program that you direct offers individual insurance counseling and group educational seminars on federal, state and private health insurance. This service is provided free of charge to seniors and seminars and counseling sessions are held at the senior centers located around the county. Organizations may arrange to have speakers from the SHIP program address their members, also without charge.

The law firm that is seeking your services is affiliated with an insurance broker who will act as a coordinator - to shop and present different insurance policies to those clients that may be interested in long term health care insurance. The e-mail correspondence that you received from the law firm indicated that they had observed and discussed one or more of your presentations on behalf of SHIP and stated that the firm's clients ". . . would appreciate having the material presented by an unbiased party and we would be proud to endorse you and you presentation. . . ."

There are two provisions of the ethics law that are relevant to your inquiry. Section 3-104(a) prohibits an employee from using the prestige, title, or authority of the employee's office or position for the employee's private gain or the gain of another. The ethics commission has generally followed the reasoning of the state ethics commission as this provision applies to secondary employment. The state has advised that secondary employment is prohibited as an abuse of the prestige of office, where the employment, "flows directly and immediately from a person's state job", or "relies directly on expertise and knowledge that is peculiar to the state position". *State Ethics Commission Opinion 91-3, COMAR, 19A*. In one opinion, the state ethics commission advised that a state employee may not conduct seminars for a private law firm that would provide the type of information that is "properly part of the agency's mission and the employee's official duties." *Opinion No. 83-4*.

An employee is also prohibited by this section from permitting the use of the employee's title, or county credentials by a private entity for promotional purposes. By introducing you as the director of SHIP, the law firm will be using your title to promote itself. Attendees at the seminar will also, as you suggest, infer that your program, or that the county's department of aging, is endorsing the expertise and services of this law firm, and its insurance broker.

Section 3-105(b), prohibits an employee from engaging in any secondary employment that would impair the impartial or independent judgment of the employee. As a paid employee of a law firm that is interested in senior citizen law, you will have a loyalty to the firm to promote its interests. This dual loyalty may well raise impairment issues. If and when the SHIP clientele becomes aware that you are employed by a particular law firm that is affiliated with a particular insurance broker, might not those clients seek your advice with respect to that firm and

that broker? Or might they assume that you have, by your connection to that firm, determined the firm to be the best choice for legal and insurance services?

You also provided a Memorandum of Understanding that identifies ethical rules for the employees and volunteers of SHIP. The ethics commission has no authority to interpret those rules or apply them to any employee's conduct. The commission's jurisdiction is limited to the enforcement of the ethics law. It is solely on the basis of this law that the ethics commission advises that you may not accept the secondary employment described in this letter.

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

Sincerely,

Betsy K. Dawson  
Executive Director