

October 17, 2000

Re: IO-00-154

You inquired whether you may accept a secondary job with a private entity that sells lift chairs and other medical equipment to the public. The owner of this entity, your potential employer, is the chairperson of the Department of Aging's commission on disability issues. The commission helps the department address disability issues associated with legislation, training, budgets, and funding matters.

In your current position as administrative assistant in the long-term care division of the department of aging, you assist clients in processing applications for emergency funds through the Medicaid waiver program, a state-funded program. Applications are primarily filed to cover expenses for lift chairs and other medical needs. You circulate the applications among the staff, soliciting their input and decisions on each application. You do not make referrals to clients, although staff members do occasionally refer clients to specific supply providers. Your potential employer is on the list of available suppliers.

Your other job duties include providing secretarial assistance to the commission on which your potential employer serves as chairperson. You prepare correspondence, send out notices, and prepare meeting minutes. You also update available housing lists and assist in the general office management.

If you accept this secondary employment, you will be helping your employer to promote his products to area churches. The employer believes that a recent letter from the archdiocese urging them to make their facilities more accessible to disabled people, has created a market for his products. You would not be involved in selling, but would be providing information only. You stated that you have significant contacts with the churches through your volunteer service with the church over the years.

Section 3-105(b)(1) of the Public Ethics Law provides that a county employee may not hold secondary employment with a private employer if that employer is ". . . subject to the authority of the employee or the authority of the County agency, board, or commission with which the employee is affiliated, or any entity that is negotiating or has entered into a contract with that agency, board, or commission. . . ."

As the chairperson of a county commission, your potential employer is subject to the authority of the department of aging, but only in a technical and limited way. It does not appear that the potential employer's company has or is negotiating a contract with the department. The employer's company is on the department's list of available suppliers, but has no other connection with the department. Absent a contractual or regulatory relationship, beyond the chairperson's participation on the commission, §3-105(b)(1) of the ethics law, would not apply to prohibit your secondary employment with this entity.

Section 3-105(b)(2) is a general provision, prohibiting a county employee from participating in any employment relationship that would ". . . impair the impartiality or independent judgment of the employee." The ministerial duties in which you participate on behalf of the commission would make any conflict of interest unlikely. And since your county duties do not involve client referrals, you are not in a position to promote the interests of your secondary employer while you are on county time.

Although there is no prohibition against your proposed secondary employment, you should be aware of two ethics provisions that may have some impact on your secondary employment. Under §3-104, you may not use the prestige, title or authority of your position for your employer's benefit. This provision would preclude you from using your county title in any marketing, advertising, or other work for your secondary employer. You may not, for example, identify yourself as an employee of the department of aging when you are working for your secondary employer. You may not promote your secondary employer to county clients, or to other county employees who may be in a position to make referrals to clients of the county. In other words, you must take care to separate your county employment from your secondary employment. Finally, under §3-107, you may not disclose any confidential information you receive in your county employment to your secondary employer.

If in the course of your secondary employment, specific issues arise that may create an apparent conflict of interest, please feel free to call the ethics commission office for further guidance. Thank you for your inquiry.

Sincerely,

Betsy K. Dawson
Executive Director