

March 1, 2000
Re: IO-00-31

You inquired whether you could continue to serve as the president of the parents' association of the private high school attended by your child. You referred to an ethics commission opinion, presumably AO-99-197, which stated that a PACE employee could not serve on the board of a particular non-profit organization. The conclusion you infer from this opinion is inaccurate.

There is no law that prohibits a county employee from serving on the board of directors of a private entity in every instance. Section 3-105(b) of the ethics law prohibits service on a board of a private entity only where: 1) the entity is subject to the authority of the employee or the employee's agency; 2) the entity has, or is negotiating a contract with the agency; or 3) service on the private entity would impair the impartial or independent judgment of the employee. Additionally, §3-105(c)(1) prohibits an employee from assisting or representing a private entity in connection with any matter in which the county has an interest, regardless of whether an "employment relationship" exists with the private entity.

The school that you serve is in fact subject to the regulation of your agency, in that it must comply with laws and regulations relating to sewer, water, zoning, and so forth. However, in previous opinions, the ethics commission has said that it takes more than a general requirement to comply with the law that triggers the prohibition of §3-105(c). See AO-99-176. In that opinion, the ethics commission advised that a police officer could not own an interest in, or be employed by a restaurant with a liquor license. A business that sells liquor is subject to a specific type of police department authority, distinguishable from businesses generally.

Similarly, a builder, plumber or landscaper would be subject to the specific authority of your department. You would not be permitted to have an interest in, or be employed by these types of businesses operating in the county, under §3-105(b)(1) of the ethics law. It is also possible that you would be prohibited from serving on the parent's association of a public school, since public schools are subject to the authority of the county, through the budget process. Since you are a cabinet level official, your duty would be to support the county executive's budget policies, and that duty could conceivably conflict with the goals of the parents' association in a public school. Service on that board might impair your impartial and independent judgment. §3-105(b)(2).

So the short answer finally, is that you can continue to serve on the board of your child's private school. However, you may not assist or represent that body in any matter in which the county may have an interest, including any building projects or rezoning requests. Also, you should not represent the association in any lobbying efforts before the state legislature involving public funds for private schools, since the county would have an interest in that matter as well.

You should also be aware that under §3-101(a)(2)(iii), you may not participate in your official capacity, in any matter where the parents' association or the school itself is involved as a party, e.g. license or permit requests or building projects. Under §3-104(a) you may not use the prestige or authority of your office position for the benefit of the association or the school, and

you may not divulge for their economic benefit, any confidential information you have acquired on the job. §3-107.

In other words, as long as you do not mix your official and personal interests, there should be no problem with your continued participation on the parents' association. Thank you for your inquiry. I look forward to meeting with you and any other members of your staff whom you believe would benefit from an introductory ethics training session.

Sincerely,

Betsy K. Dawson
Executive Director

BKD:vlj