

Anne Arundel County Ethics Commission

Advisory Opinion

01-136

Issue:

Whether an employee of the Department of Aging who oversees a program that evaluates seniors may be compensated for teaching a non-credit course at the community college that would provide information about available social services in the County.

Background:

The director of the adult evaluation review services for the Department of Aging would like to teach a course, "Negotiating the Care System", at the local community college. The course will be offered over two evenings at the college, and will provide information about the types of social services available to people in the county. The course will be a non-credit course offered to anybody who registers.

The employee directs a program which evaluates the needs of senior clients and makes suggestions of, or provides referrals to, various services available in the county. The evaluations are done primarily by social workers and nurses with the employee's supervision and input as needed.

Discussion:

The relevant provisions of the ethics law are §3-104, which prohibits the misuse of the title, authority or prestige of an employee's office or position for the employee's private gain, and §3-105, which prohibits an employee from accepting certain types of secondary employment.

The ethics issues involved with teaching as secondary employment have been reviewed by the state and county ethics commissions. The Maryland State Ethics Commission, in Opinion 81-36, reviewed a question about secondary employment involving a state police officer who commanded the division responsible for the purchase and maintenance of police vehicles. He was asked to teach a class on driving efficiency to the International Association of Chiefs of Police at a seminar in New York. The ethics commission found that since there were no contracts between the IACP and the state police, no regulatory relationship, and no lobbying by the IACP involving the agency, there would be no inconsistent employment issue. The commission also concluded that since IACP had no "official activities in Maryland", there would be little chance that the secondary employment would impair the impartial or independent

judgment of the police officer.

Considering the prestige of office issue, the state ethics commission, relying on a law substantially similar to the county law, concluded that "more than common subject matter or expertise is necessary for an outside activity to be viewed as directly and immediately related to an official's duties".

The commission found that the police officer's course on driver efficiency included virtually no information that could be directly related to the officer's state job. The officer's expertise in driver's efficiency, partially acquired through a three day state police training course, was not generally required for the officer's state job.

In another opinion, 83-4, the commission found that the Executive Legal Assistant to the Secretary of State was prohibited under the secondary employment provisions, from conducting seminars on the Maryland Condominium Law for private law firms or for the Maryland Institute of Continuing Practical Education of Lawyers (MICPEL). The official duties of the Assistant included serving as the Administrator of the Division of Condominium Registration. In that capacity, the Assistant developed and carried out policies and procedures for implementing the Condominium Law. The commission concluded that the secondary employment relationship would violate the provision against participating in any employment that would impair the impartial or independent judgment of the employee. See, Public Ethics Law, §3-105(b)(2). The commission said that since some of the attendees at the seminars "could be attorneys or developers. . . currently involved in condominium registration activities", and the subject "specifically has to do with his official duties", the secondary employment was prohibited. The ethics commission further found that since the type of information provided in the seminar "is properly part of the agency' mission and the employee's official duties", the acceptance of fees for participating in the seminars was also prohibited under the prestige of office provision.

The mission of the Department of Aging is to:

1. develop and administer, as well as advocate for services and programs for older adults and individuals with disabilities to promote choice, independence, and dignity.
2. Advocate for and protect the rights of older adults in nursing homes, assisted living facilities, and retirement communities.

In considering whether the teaching job offered to the Department of Aging employee, the commission considered several factors. First, providing the public with information about the availability of services for senior citizens is not "directly and immediately related to" the job of the director of adult evaluation services. It is not part of the director's official duties to educate the public about the care services available in the county. Second, although some of the students taking the class may have a specific interest in following up the information learned in the class by contacting the Department of Aging for services, there is no likely way that the class will give them any advantage over other service referral clients. Third, there is no apparent way in which

the director, by bringing information to the public, will be impaired in the impartial and independent conduct of his official duties. Fourth, since the class is limited in both duration and the compensation being paid to the director, the private gain to the director from this activity will be nominal. Fourth, there was no evidence that the community college does business with, or is subject to the authority or control of the Department of Aging.

Conclusion:

The ethics commission advises that the director of adult evaluation review services for the Department of Aging may pursue the secondary employment in this particular case. The commission further advises that the director may not permit the official title of the director to be used in the college brochure to promote this class. Finally, the director should refrain from participating in any matter in an official capacity, where students taking the class are clients of the Department of Aging.

Date: October 22, 2001

By: The Anne Arundel County Ethics Commission