

## **Anne Arundel County Ethics Commission**

### **Advisory Opinion**

**AO-01-41**

#### **Issues:**

1. Whether the provisions of §3-105 of the Public Ethics Law, limiting or prohibiting certain types of secondary employment are subject to exceptions under certain circumstances.
2. Whether an employee may accept secondary employment with an entity that has contracts with the employee's agency, where the employee has no role in the negotiation, execution, administration, or performance of the contracts.

#### **Facts:**

A secretarial employee in the purchasing office of the county would like to accept employment with a private entity that has contracts with the county, through the purchasing office. The entity is a newspaper that publishes the county's classified and legal advertising, for a contract value of approximately \$100,000 a year. There are also contracts with other newspapers for similar services. The employee's job in the county is secretarial, and the employee's supervisors are buyers who do not participate in the newspaper contracts in any way. The employee does not participate in the newspaper contracts in any way. The employee would like to accept the job of data entry clerk for the newspaper and in this capacity, would have no discretionary duties with regard to the county's contracts.

#### **Discussion:**

Section 3-105 of the Public Ethics Law, regulating secondary employment, is the provision that is pertinent to this inquiry. Subsection (b)(1) of that section provides in pertinent part that, " an employee may not be employed by, or have an interest, in any entity . . . that is negotiating or has entered into a contract with that agency, board, or commission, . . . "

Since the county contracts on behalf of its agencies, the ethics commission has determined that this provision applies to those contracts, entered into by the county, that are administered by, or in some way involve, a specific agency. In the present case, the purchasing office administers the contracts with this and other newspapers and is involved on a frequent basis in the performance of the contracts.

The plain language of §3-105(b)(1) of the ethics law is broad and would seem to prohibit a county employee from working a second job with any entity that has a contract of \$1000 or

more with the employee's agency, regardless of whether the second job would create the potential for a conflict of interest, or even the appearance of a conflict of interest. This result is contrary to both the Maryland Public Ethics Law and the legislative purpose of the county's own ethics law.

Under the State Ethics Law, originally the model for the county's ethics law, secondary employment is regulated under §15-502. Its prohibitions are similar to the prohibition set forth in the county's ethics law, §3-105(b)(1). However, under state law, an exception permits secondary employment with a entity contracting with the employee's agency, if the employment does not create a conflict of interest or the appearance of a conflict of interest. This exception makes good sense. It is an exception that is notably lacking in the secondary employment provision of the county's Public Ethics Law.

The county's ethics law does have several provisions that mirror the state law exception. Specifically, in §3-101(b), the non-participation provision, the law provides that,

An employee who is prohibited by subsection (a) of this section from participating in a matter may participate in the matter if the Ethics Commission determines that the participation by the employee will not result in a conflict between the private interests of the employee and the employee's County duties, after receiving written disclosure from the employee of all material facts.

This exception is also available to members of the county council, §3-102(c) and (d), and to the county executive, §3-103(c) and (d). Section §3-109, which prohibits a former employee from assisting or representing a new employer in specific matters in which the former employee exercised substantial responsibility as a county employee, has a similar exception. That exception, §3-109(b), provides that,

On application, the Ethics Commission may waive the prohibitions of this section, if it determines that the County's interests will not be adversely affected by the assistance or representation. The Ethics Commission may attach to the waiver any conditions that it determines are in the County's best interest.

Even §3-106, which generally prohibits gifts from controlled donors, allows an exception for,

a specific gift or a class of gifts that the Ethics Commission exempts from the operation of this section by opinion or regulation, respectively, which includes a finding the acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the County and that the gift is purely personal and private in nature.

In all these cases, the ethics commission has been granted the discretion to determine whether the facts of a given situation preclude the possibility of a conflict of interest or even the appearance of a conflict of interest. The purposes of the ethics law, §1-102, are to assure the public that the impartial and independent judgment of county employees will be maintained and that the conduct of the county's business will not be subject to improper influence or even the appearance of improper influence. Indeed the ethics law is to be liberally construed to effectuate these purposes.

After considering the purposes and provisions of the ethics law, the ethics commission has concluded that it may exercise discretion in determining whether an exception to the secondary employment prohibitions should be permitted under appropriate circumstances. Those circumstances would include specific findings by the commission that the county's interests will not be adversely affected by the secondary employment and that the secondary employment will not create a conflict or even an appearance of a conflict between the employee's public duties and the employee's private interests.

In the present situation, it is true that §3-105(b)(1) would technically bar the purchasing office employee from working as a data entry clerk for a newspaper publishing company. However, in this particular case, the employee's county duties are not connected to the contracts between the purchasing office and the newspaper. The employee's duties are ministerial in nature. The employee's secondary job duties would also be ministerial in nature. There is no likelihood that the employee's secondary job will adversely affect the county's interests, or that the employee's county job would be subject to improper influence. For these reasons, the ethics commission concludes that an exception to §3-105(b)(1) is appropriate in this particular situation.

**Conclusion:**

The ethics commission advises that the purchasing office secretarial employee may accept secondary employment as a data entry clerk for a newspaper, without violating the intent or spirit of §3-105(b) of the ethics law.

Date:

By: The Anne Arundel County Ethics Commission