

## **Anne Arundel County Ethics Commission**

### **Advisory Opinion**

**01-58**

**Issue:**

Whether an attorney to, or a member of the Anne Arundel County Board of License Commissioners may be appointed to the Charter Revision Commission, without violating the Public Ethics Law.

**Facts:**

Under the Anne Arundel County Charter, §1203, the county council shall appoint by resolution a Charter Revision Commission after the publication of the decennial census of the United States population. The charter commission shall be composed of "five representative citizens of the County". . . . The commission is appointed to study the county government and make findings and recommendations on revisions to the county charter, including the possible need for redistricting of councilmanic districts. Under §1-101(f)(1)(ii), members of the charter commission are considered "employees" covered by the ethics law, even though these "employees" receive no compensation.

The Anne Arundel County Board of License Commissioners ("the liquor board") is also covered by the county's ethics law.<sup>1</sup> Commission members and liquor board inspectors file annual financial disclosure statements. In a previous opinion, AO-96-108, the ethics commission concluded that the attorney to the liquor board is also an "employee" covered by the ethics law, although the attorney does not file an annual disclosure statement.

The connection between the liquor board and the county government is limited; commission members who are appointed by the governor, hire the commission's attorney, the inspectors, and the administrative staff. The liquor board enforces the liquor laws that are created by state statute. While the county funds the operations of the liquor board, it is the state controller that approves the board's proposed budget. Even the compensation of the commission members, inspectors, staff, and attorney are established by state statute.

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<sup>1</sup> Although the State Ethics Commission has never expressly determined that the various county liquor boards are covered by local ethics laws as opposed to the state ethics law, by approving the county Public Ethics Law, the state implicitly acknowledged the propriety of the county's coverage of the liquor board.

Discussion:

Section 3-105 of the ethics law is the pertinent provision in this inquiry. That provision regulates secondary employment by county employees, whether they are compensated, or non-compensated volunteer "employees". If a liquor board attorney (board member, inspector, or staff) is appointed to the charter commission, that appointee will essentially be engaged in secondary employment, even though it will be non-compensated employment.

Section 3-105(b)(1) prohibits an employee from being employed by an entity subject to the authority of the county employee or the county employee's agency, or that is negotiating or has entered into a contract with the employee's agency. This provision does not apply in this case because the charter commission and the liquor board have no connection between them at all.

Section 3-105(b)(2) prohibits any secondary employment by a county employee that will impair the impartiality or independent judgment of the employee. Because of the total lack of connection between the charter commission and the liquor board, the ethics commission cannot imagine that the position of attorney to the liquor board is incompatible with a position on the charter commission.

Section 3-105(c) prohibits a county employee from representing or assisting any entity in connection with a matter in which the county has an interest, except in the course of the employee's official duties. The ethics commission has consistently held that the county's interests must be competitive with, or adversarial to the interests of the secondary employer entity, in order for this prohibition to apply. It is inconceivable that the commission and the liquor board have competing or adversarial interests. They simply do not have mutual interests at all.

Conclusion:

The ethics commission advises that the attorney to the liquor board or any member of employee of the liquor board is not prohibited by the ethics law from being appointed or serving on the Charter Revision Commission. Even the most wide-ranging charter amendment can have no impact on the liquor board which is a creation of state statute.

Date:

By: The Anne Arundel County Ethics Commission