

July 23, 2001
RE: IO-01-114

You inquired whether the Public Ethics Law would prohibit you from continuing your employment for the county while you run for mayor of Annapolis, and if elected, while you serve as mayor. The ethics law has no jurisdiction over political activity, which appears to be protected by state law, Article 24, §13-103, Annotated Code of Maryland (1957, as amended). That means that you may run for office while you are an employee of the county, provided that you do not participate in political activity while you are on the job during work hours or advocate the overthrow of the government by unconstitutional or violent means. See §13-105. You may want to confirm this opinion with the county Office of Law.

However, the ethics law does regulate secondary employment. Serving as the mayor of Annapolis would constitute an employment relationship with the City of Annapolis, considered a "business entity" under the ethics law.¹ Section 3-105(c)(1) of the county ethics law provides that, An employee may not be employed by any person or undertake on behalf of any person to assist or represent that person in connection with a matter in which the County has an interest, except in the course of the employee's official duties.²

This section is an admittedly broad provision. The ethics commission has repeatedly advised that this section only bars employment where the interests of the county would be potentially adversarial to, or competitive with, the secondary employment. See, for example, AO-01-58. If you were serving as the Mayor of Annapolis, there would be several potential issues of a competitive or adversarial nature with the county. Issues of annexation, the tax differential, water and sewer, garbage collection, facility maintenance, and fire and police issues are among the many concerns where the county and the city have potentially adversarial or competitive interests.

¹ This interpretation is consistent with the Maryland Public Ethics Law, which has consistently defined entities to include local governments. See, 19A COMAR, 85-13, (a copy of which I have attached for your information).

² The definition of "person" includes "entity. Article 1, Definitions, §1-101(h), of the Anne Arundel County Code.

Section 3-105(b)(2) prohibits a county employee from holding any other employment relationship ". . .that would impair the impartiality or independent judgment of the employee." In your present job with the long range planning division of the Department of Planning and Zoning, the city would also have concerns, since the planning and zoning decisions of the county may affect city traffic, employment, and other quality of life concerns. As the mayor of Annapolis, would your input into county planning decisions be affected by what would be best for the county, or for the city?

In the opinion by the State Ethics Commission, cited above, a hearing examiner for the state's Public Service Commission requested advice as to whether he could serve, if elected, as a member of the Baltimore County Council. The commission advised that the dual positions would create significant impairment issues that could not be sufficiently addressed by recusal on an issue by issue basis. The commission also advised that additional issues would be likely to arise under the abuse of office provisions and use of confidential information sections of the state ethics law. The county ethics commission finds the State's reasoning to be sound. For these reasons, the ethics commission advises that if you are elected to be the Mayor of Annapolis, your continued employment for the county would be prohibited by §3-105 and would raise significant issues under other provisions of the ethics law.

Thank you for your inquiry. If you have additional questions, please call any time.

Sincerely,

Betsy K. Dawson
Executive Director