

August 14, 2001
Re: IO-01-117

You inquired whether you may accept an appointment by the members of the State General Assembly to chair a task force that would make recommendations to the State Highway Administration regarding the environmental issues facing the Weems Creek bridge project. You currently serve on the county board of appeals. In that capacity you hear land use and zoning appeals on properties within the county. The Weems Creek bridge crosses the city-county line, and there are properties that could be impacted by any changes to the bridge or to the environment around the bridge. The bridge itself is on a state road, and the state has the jurisdiction to renovate, expand, or rebuild the bridge. The county would have an interest in the traffic impact that any bridge project would have on Bestgate Road but beyond that, the county's interest is purely speculative.

There are two sections of the ethics law that are relevant to your inquiry. Section 3-105(b)(2) prohibits an employee from holding any employment relationship that would impair the impartiality or independent judgment of the employee. An employment relationship may exist even in the absence of compensation if there is a duty of loyalty, a fiduciary duty to the organization for which the employee works. The ethics commission concluded that a secondary employment relationship was created by the appointment of a county employee to a small area committee. See, AO-99-17. The commission concluded that an employment relationship did not exist when an employee was appointed to serve on a committee of a non-profit private organization. See, AO-00-09. In that opinion, the ethics commission concluded that:

Membership on a committee of an entity falls someplace in the middle, between simple membership, and membership on the policy-making and managerial board of the entity. In some cases, the type of committee on which service is performed may create a fiduciary responsibility, and in other cases, the service will be less obligatory in nature.

Your service on a task force for the state would be in the nature of a policy making responsibility. It would be similar to a person's membership on a small area committee that recommends zoning changes to the county's general development plan. Therefore, your participation on the task force would appear to the type of duty that occurs in an employment relationship. The fact that you would be the chairperson of this task force enhances that relationship. However, the employment relationship with the task force would only be barred if it would impair your impartial or independent judgment as a board of appeals member. The ethics commission believes that there would be no impairment. Property owned by the state does not come under the jurisdiction of the board of appeals.

Section 3-105(c)(1) prohibits an employee from assisting any person (or entity) in connection with a matter in which the county has a competitive or adversarial interest. See, AO-01-58. As a practical matter, the county may have strong opinions about the recommendations

of the task force, or about the final plan developed by the state. However, the county's legal interests in the Weems Creek bridge redevelopment project extend only as far as the project's traffic impact on county roads. Since the task force is concerned with environmental issues, the interests of the county and the task force should not be adversarial in nature.

The ethics commission has concluded that you may serve on the Weems Creek bridge task force. If you do serve, you should be aware that Section 3-101(a) prohibits an employee from participating in any matter in which the employee has an interest or in which one of the parties to the matter has a business relationship with the employee. For example, if the State Highway Administration appears as a witness before the board of appeals while you are serving on the task force, you may be required to recuse yourself from participation in the matter before the board. Should such issues arise, please feel free to contact the ethics commission for advice.

Thank you for your inquiry.

Sincerely,

Betsy K. Dawson
Executive Director