

June 7, 2001
Re: IO-01-93

You inquired whether your spouse, the owner of an embroidery business, may contract with the Board of License Commissioners, the agency where you work, to provide the printing on the uniforms that the board proposes to purchase for its members and employees. You stated that your spouse is the sole owner of the business and that it is operated out of your home. You also stated that you occasionally "fold shirts" or other types of minor tasks but that it is primarily your spouse's responsibility to operate the business.

The Public Ethics Law, §3-105(b)(1) prohibits an employee from having an interest in, or being employed by an entity that is: (1) subject to the authority of the board for which the employee is affiliated; (2) or that is negotiating a contract with the board; or (3) has a contract with the board. This provision only applies to contracts worth least \$1000.00. Although the ethics commission generally concludes that a spouse's employment is not an interest attributable to the employee for purposes of secondary employment, your situation is different. The business is operated out of your home, and you do participate, albeit informally, in its operation. For these reasons, you do have an interest in the business. See, State Ethics Commission Opinion 97-3, 19A COMAR.

If the contract to provide printing on the uniforms exceeds \$1000.00, §3-105(b)(1) would prohibit you from entering into a contract with the board. See, State Ethics Commission Opinion 82-8, 19A COMAR. In that opinion, the state commission advised that an employee of the Department of Economic and Community Development was not permitted to sell picture frames to the employee's department because of a provision identical to the county's law.

Section 3-104(a) prohibits an employee from using the prestige of the employee's position for the employee's private gain or the gain of another. As an administrator you are involved on a daily basis in the work of all board employees and members. Your work for the board is managerial and has a significant impact on all board activities. Particularly where the contract is given to you without the benefit of competitive bidding, the conclusion could easily be reached that you and your spouse acquired the contract because of your connections with the board members and employees. See, AO-98-35, IO-97-39. It is even more important to note that the ethics law is designed to prevent even the appearance of improper influence. §1-102(a)(2). As the State Ethics Commission said in its above-cited opinion,

. . . the conflict of interest provisions of the Ethics Law are also concerned with avoiding situations where public confidence is undermined by the ability or apparent ability of State employees and officials to use their official position to advance their private economic interests. In this situation a . . . competitor or a member of the public would not be unreasonable in concluding that the [employee] is in a position to use his status as a DECD employee to gain a competitive advantage over others.

The ethics commission advises that under §3-101(b)(1), neither you nor your spouse nor a company owned by either you or your spouse may contract with your agency if the contract is worth at least \$1000. 00. The commission further advises that any contract with your agency that is worth more than about \$25.00 may well create the appearance of impropriety under §3-104(a) and should be avoided.

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

Sincerely,

Betsy K. Dawson
Executive Director