

## **Anne Arundel County Ethics Commission**

### **Advisory Opinion 02-137**

#### **Issue:**

Whether an employee of the Anne Arundel County Fire Department is engaged in prohibited secondary employment by serving as a volunteer firefighter and as the president of the Anne Arundel County Volunteer Firefighters Association.

#### **Facts:**

The county fire department contracted with a person to serve as a part time exempt volunteer coordinator. The new employee is also a volunteer firefighter in the county, and currently serves as the president of the Anne Arundel County Volunteer Firefighters Association (the "Association.") The Association is a private corporation consisting of volunteer fire company members. The Association represents the various members in their dealings with the county fire department, through the office of the president of the Association and various committees.

The duties of the volunteer coordinator include: managing the recruitment/retention program for volunteer firefighters; consulting with volunteer fire companies and the Association about management and administration issues; providing a liaison between the Association, the volunteer fire companies, and the fire department command staff; compiling and distributing statistical reports from the volunteer fire companies; and distribution and retrieval of county owned equipment to and from volunteer fire companies and volunteer firefighters.

The county fire department and the volunteer fire companies work closely together in maintaining public safety. Career firefighters work with volunteers and serve in volunteer owned fire stations and with volunteer owned apparatus. The arrangement is regulated by reciprocity agreements between the county and the volunteer fire companies. The county supplements the volunteer company's operational budget and maintains volunteer owned apparatus. The volunteer firefighters are subject to the authority of the fire chief and other fire department command officers. Career firefighters are subject to the authority of volunteer officers.

Disputes that arise between the county fire department and the volunteer fire companies over the reciprocity agreements are handled by the fire advisory board (the "board".) The board is comprised of volunteer firefighters selected by the Association, a career firefighter, and an appointee of the county executive. The board's decisions with regard to the contract are final and binding upon both parties.

The employee who is the subject of this opinion was until recently, a member of the board, as well as the president of the association.

## **Discussion:**

Several subsections of §3-105 of the Public Ethics Law is relevant to this inquiry. The relevant portions of that section provide that:

(a) In this section, "contract" means a contract that binds or purports to bind the County to pay a sum of money in excess of \$1,000 for the purpose for which the contract is made.

(b) An employee may not:

(1) be employed by, or have an interest, in an entity subject to the authority of the employee or the authority of the county agency, board, or commission with which the employee is affiliated, or any entity that is negotiating or has entered into a contract with that agency, board, or commission; or

(2) hold any other employment relationship that would impair the impartiality or independent judgment of the employee.

(c) (1) 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.

The volunteer fire company with which the employee is affiliated has a contract with the county, not with the fire department. In previous opinions, the ethics commission has advised that a contract with the county that involves or is administered by the employee's agency, falls within the meaning of §3-105(b)(1). See, e.g., AO-01-41, AO-00-65. For this reason, §3-105(b) would bar the fire department employee from serving as a member of a volunteer company if as a member of the volunteer company, the employee is considered to be employed by, or have an interest in the company.

Unless a member of a volunteer fire company is compensated for services by the company, through contract or through a traditional employer-employee relationship, a volunteer would not be "employed by" the volunteer company within the meaning of §3-105(b)(1). A volunteer would not have either a legal or economic interest in the volunteer company, unless the volunteer was also an officer or held some other position of responsibility in the company. Mere membership in a private nonprofit organization does not generally fall within the definition of an "interest" in the organization. See, AO-00-09, IO-01-117. Therefore, unless a county fire department employee is employed by, or has a position of authority in a volunteer fire company, §3-105(b)(1) would not prohibit the county employee from also being a member of a volunteer fire company.

Section 3-105(c)(1) prohibits an employee from representing the interests of any entity in a matter in which the county also has an interest. The ethics commission considers this provision to apply only to those interests where the county and the private entity may be potentially competitive or adversarial in nature. See e.g., AO-02-73, AO-01-58, AO-98-119.

Despite their cooperative relationship, the county fire department and the volunteer fire companies have had and continue to have issues of an adversarial and competitive nature. The president of the Association has a duty to promote the best interests of the volunteer fire companies. Section 3-105(c) prohibits a county employee from representing or assisting the Association in any matters of interest to the county, which would include virtually all matters of interest to the Association. It is only reasonable to further conclude that participation as the president of an advocacy group for the volunteer firefighters would impair the impartial and independent judgment of an employee of the fire department, in violation of §3-105(b)(2).

**Conclusion:**

The ethics commission advises §3-105(b)(1) does not prohibit the volunteer coordinator for the county fire department from continuing an active membership with a volunteer fire company. The commission further advises that §3-105(c)(1) and §3-105(b)(2) prohibit the volunteer coordinator from continuing to serve as the president of the Anne Arundel County Volunteer Firefighters Association, or from representing or assisting that organization in any matter of interest to the county, except in the course of official county duties, at the direction of the county fire department. The ethics commission does not address the employee's previous membership on the fire advisory board, since that membership has expired.

Date: December 16, 2002

By: the Anne Arundel County Ethics Commission