

## Anne Arundel County Ethics Commission

### Advisory Opinion 02-143

#### Issue:

Whether a corporation owned and operated in part by a high ranking county police officer may employ other county police officers.

#### Facts:

A county police captain, along with one other person, who is a civilian, is operating a business entity that provides background security investigations for employers. The charter of the entity, a corporation, provides that the police captain is a 49% owner. The other owner, with a 51% interest, is the CEO of the corporation. The police captain is the president. Paragraph 5 of the corporate bylaws, states that:

it is the intent of [the corporation]<sup>1</sup> to provide quality employment background investigative services to private, local, state, and federal agencies. The duties and responsibilities of [the corporation] are that of a background investigative company and NOT a private investigative service, requiring no special private investigative licensing. . . .

Paragraph 6 reads:

[The corporation] will use the services of employees to deliver quality background investigations to agreeing customers. In order to comply with the laws and regulations governing state and local ethics and to avoid a conflict of interest or the perception of conflict, [the corporation] will be divided into two separate divisions. This organizational structure will be strictly maintained so long as [the police captain] maintains his capacity as a sworn law enforcement officer with the Anne Arundel County Police Department. Those two divisions are the Local Law Enforcement Division, hereafter referred to as LLED, and the Civilian/Police Investigative Division, hereafter referred to as CPID. Each division will perform separate, but equal, duties with separate accountability and supervision.

Paragraph 7:

The LLED will consist of any sworn or civilian employees of the Anne Arundel County Police Department, including the Animal Control Section and any other person as deemed fit by [the civilian owner]. All employees assigned to the LLED must adhere to the Rules and Regulations pertaining to Secondary Employment as delineated in the Anne Arundel County Police Rules and Regulations and Manual of Procedures. AT NO time during the course of employment with [the corporation] can an active member of the Anne Arundel County Police

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<sup>1</sup> The words in brackets are substitutions for the name of the corporation, and the names of the owners.

Department, sworn/civilian use their position, departmental credentials, vehicle, files, reports, or various databases in connection with [the corporation] investigations. ONLY [the civilian owner] may terminate and/or discipline a member of the LLED staff and [the police captain] will in no way serve as a consultant or decision maker when it comes to matters affecting a member of the LLED staff.

Paragraph 8:

The CPID will consist of anyone else meeting the criteria for investigator, as stated in this document, to include non-Anne Arundel County Police Department personnel of both a civilian and/or sworn state, local, and federal law enforcement status. [The police captain] will serve immediate direction of the staff of the CPID, however in his absence, except as listed under paragraphs 4 & 9, [the civilian owner] can assume responsibility and direction over the CPID.

There is no evidence that the corporation is engaged in private investigative work other than employment background checks. There is no evidence that the corporation is subject to the authority or regulation of the county police department, or that the corporation has, or plans to enter into any contracts with the police department.

The standard contract form for the corporation provides two significant facts in this inquiry. First, the contract lists the qualifications for investigator-employees of the corporation. The contract provides that all investigators "must have completed a training seminar sponsored by the Contractor." The contract also describes for quality control, that "all completed cases will be reviewed by our Quality Control Unit, which is under the supervision of the Contractor President." The police captain is the president of the corporation.

**Discussion:**

There is nothing in the ethics law that prohibits a police officer from conducting background investigations by way of secondary employment, since this type of work is neither adversarial or competitive with the county police department. In the absence of any contractual, regulatory, adversarial, or competitive relationship between the corporation and the county police department, there is no reason why a police officer may not own or be employed by an entity that performs private background investigations.

The problem arises where the corporation that hires police officers is owned and operated by two people, one of whom is a captain in the county police department. Section 3-104(a) of the ethics law prohibits an employee from using the "prestige, title, or authority of the employee's office or position for the employee's private gain or the gain of another." A ranking official in the police department abuses the authority of the office by employing police officers over whom that officer has supervisory authority. The captain would therefore be prohibited from employing any county police officer holding a lower rank, regardless of whether the lower ranked officer works directly with the captain. Any lower ranking officer in the county is subject to the authority of a police captain, even if not on a daily basis. The problems inherent in this secondary employment are as numerous as they are obvious. Questions of job assignments, performance evaluations, and promotional opportunities would be subject to scrutiny for police

officers who work for the corporation as well as for those officers who do not work for the corporation. There would be at least a perception that working for the corporation would be necessary to ensure a good relationship with the captain, a necessary component to a successful county police career. A police officer who is discharged from the corporation might also fear retaliatory action from the captain while on the job.

The provision of the corporate bylaws that expressly prohibits the captain from hiring, supervising, or firing county police officers is ineffective. A corporation that is owned by only two people cannot as a practical matter, operate with two wholly independent divisions. Both the president and the CEO must participate in the significant policy and operational decisions that are part of running a small business. Policy decisions affect all employees. There is simply no way to insure that the police captain does not play a role in the day to day operations of the so-called LLED division of the corporation.

It is also a violation of §3-104(a) of the ethics law for the police captain to use the county police department as a market for employees. Paragraph 7 of the bylaws specifically targets the police department as an employee pool - a pool that is accessible to the captain precisely because of the rank and position of the captain's office.

Two of the items in the corporation's standard contract also appear to violate §3-104(a). The quality control provision provides that the president of the corporation reviews all completed cases. Since the captain is the president, it is probable that the work of some of the police officers is subject to the review of the police captain. The contract also provides that all investigators for the corporation shall "have completed a training seminar sponsored by the Contractor." It is possible that the captain teaches or provides materials for this seminar as well.

**Conclusion:**

The ethics commission advises pursuant to §3-104(a) of the ethics law, that a corporate entity owned and operated by two people, one of whom is a captain in the county police department, may not employ county police officers. A police captain may own and operate a corporation that provides background investigations for private employers, but the employee pool may not be related to the captain's official duties.

Date: December 19, 2002

By: the Anne Arundel County Ethics Commission