

March 11, 2002

Re: IO-02-29

You inquired whether you may serve as the attorney to the Anne Arundel County Board of License Commissioners, known as the Liquor Board, if you have an ownership interest in a bar in Anne Arundel County. You said that you plan to remove your name from the liquor license, but plan to retain your ownership interest in the business.

The first question raised by your inquiry is whether the attorney to the liquor board is considered an "employee" subject to the Anne Arundel County Public Ethics Law. "Employees" covered by the ethics law are listed under §1-101. Specifically, §1-101(f)(1)(v) provides that the members and employees of the Board of License Commissioners are employees covered by the ethics law¹. While lawyers are usually considered to be independent contractors with respect to their clients, the lawyer to the liquor board has been determined to be an employee of the liquor board. See, AO-96-108 (enclosed).

The second question is whether an employee of the liquor board may own an interest in a bar. This question was settled in AO-99-176, in which opinion the ethics commission advised that a police officer may not have an ownership interest in a bar in the county. In that opinion, the commission concluded that the police department, like the liquor board, has regulatory authority over bars in the county. Under §3-105(b)(1), "an employee may not. . . 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, . . .". You have an ownership interest in any entity that is subject to the authority of the liquor board with which you seek employment.

The reason for this prohibition is obvious. Although you may not have decision making authority on the board, as its attorney, you will be in the position of giving the board legal and perhaps, general advice. While you would obviously recuse yourself from participating in any matter in which your own business entity is involved, your impartiality will always be suspect where an enforcement action is pending against an entity like your own, or where the application of liquor license rules and regulations to a similar entity may be under discussion. As a competitor with other license holders, or perhaps as a compatriot, your private interests may conflict with your public duties on a frequent basis.

For these reasons, the ethics commission advises that you may not serve as the attorney for the liquor board while you have an ownership interest in a bar in Anne Arundel County. Thank you for your inquiry and please call if you have any other questions or concerns.

Sincerely,

Betsy K. Dawson
Executive Director

¹ See Bill 84-01, which reinstated §1-101(f)(1)(v) after it was erroneously deleted from the ethics law.