

March 26, 2003

Re: 10-03-21

You inquired whether you may bid on contracts with the county for lawn service care as long as the contracts do not involve the department of public works where you are employed. You own and operate a lawn care service. In your county employment, you work in the area of technical support, which is completely unrelated to your secondary business.

The ethics law prohibits secondary employment with any entity that is: subject to your authority or the authority of your department, or that has or is negotiating a contract with the county that involves your agency. §3-105(b)(1). You have stated that the contract you seek will not involve the department of public works in any way. From this assurance, the ethics commission assumes that your contractual work with the county would involve no oversight or other regulatory authority by your department. In that case, this law would not preclude you from contracting with the county.

There is another restriction in §3-105(c)(1), which prohibits an employee from assisting or representing any person in connection with a matter in which the county has an interest. The county has an interest in all its contracts, and your secondary business, if it entered into a contract with the county, would require your participation in a matter in which the county has an interest. The ethics commission has generally interpreted this prohibition to apply where the interest of the county may be adversarial or competitive with the employee's interest. While it is arguable that contractual relationships are inherently adversarial, the ethics commission believes that this provision does not prohibit an employee from contracting with the county under any circumstances. If the law had intended to prevent employees from contracting with the county in any way, the prohibition set forth in §3-105 would not have been limited to prohibiting an employee from being employed by, or having an interest in any entity that contracts with the employee's department.

Considering your assurances that contracts between your lawn care service and the county would not involve the department of public works in any regulatory or other manner, the ethics commission advises that you may bid on contracts with the county.

Thank you for your inquiry.

Sincerely,

Betsy K. Dawson  
Executive Director