

## **Anne Arundel County Ethics Commission**

### **Advisory Opinion**

**04-79**

**Issue:**

Whether police officers may accept secondary employment as security guards at bingo establishments.

**Facts:**

Of the 667 sworn police officers in Anne Arundel County, 282 of them engage in secondary employment - some of them holding more than one secondary job. The large majority of these officers are secondarily employed in security functions, where according to the police department's policy, they wear their county police uniforms. Some officers are also permitted to use their personal patrol vehicles while engaged in private security work.

Police officers are required to receive departmental approval for any second job. Prior to April 30, 2001, ten officers were working security for Bingo World without having first obtained the necessary approval. When two additional police officers sought but were denied departmental approval to work security for Treasure City, another bingo establishment, the Fraternal Order of Police intervened on the officers' behalf. As a result of negotiations between the police department and the FOP, the chief of police wrote a letter to the attorney for the FOP on April 30, 2001, in which he agreed to permit police officers to work at Bingo World and Treasure City, provided that the appropriate paperwork be promptly submitted by all participating police officers. Treasure City has since gone out of business, but another bingo hall, which does not hire county police officers for security, is doing business in the county.

Recently, a number of police officers sought and were denied permission to work security at Delta Bingo. The denial was apparently based on the letter of April 30, 2001, which limited secondary employment to two specific bingo facilities. Following a step II grievance at which the denial was upheld, the office of personnel requested an opinion from the ethics commission "as to the propriety of uniformed employees of the Anne Arundel County Police Department working either uniformed or non-uniformed secondary employment at commercially licensed bingo establishments." The secondary employment at bingo halls, as described by the personnel office in its request for an opinion, is "limited to security functions, observing the gaming operations to ensure management's compliance with state and local laws, escorting employees to make bank deposits and assisting with traffic direction."

In considering this issue, the ethics commission heard testimony from the personnel office, the police department administration, the president of the FOP, the attorney for the FOP, a police officer who has been employed by a bingo establishment for ten years, and the attorney

for the three bingo establishments in the county. The ethics commission recognizes and commends the witnesses' informative testimony and the clear and concise manner in which it was presented. The witnesses agreed, or at least did not dispute, the FOP president's assertion that there is always a large quantity of cash at bingo facilities, and that the presence of uniformed police officers at bingo establishments deters criminal activity and provides a sense of security to the consumers who play bingo. In fact, the testimony indicated that many of the customers assume that the officers working at the bingo establishments are actually on-duty police officers. One officer who works at Bingo World estimated that in his 10 years of working at the facility, there were only about five incidents of disorderly conduct. Presumably his presence is at least partly responsible for the low incidence of this type of unwanted behavior.

Bingo World hires police officers with the assistance of this same officer who is employed there. When one officer quits or retires from employment with Bingo World, there are others who have expressed an interest in filling the vacancy. This officer also does the scheduling of the off-duty officers for the bingo hall. This officer is considered an employee of Bingo World, as opposed to an independent contractor and receives employee benefits, including a 401k plan.

#### Discussion:

Two provisions of the public ethics law are relevant to this inquiry. The first provision, §5-102(a)(1)(i), provides that a county employee may not be employed by a person subject to the authority of the employee or of the employee's governmental unit.

In a previous opinion, AO-98-91, the ethics commission advised that this section applied to police secondary employment only "when the employer's business operates under particular rules or regulations that may involve the police department's authority in a specific way." Subsequently in AO-99-176, the commission advised that a police officer was prohibited by §3-105 from working for a restaurant with a liquor license. One of the reasons for this conclusion was the delegation of specific responsibilities to the police department to enforce the rules and regulations imposed on licensees by the county board of license commissioners (the liquor board).

The operation of a bingo hall is subject to a comprehensive regulatory scheme, delineated in Article 16, Title 2 of the Anne Arundel County Code. In the first instance, §2-103 provides that the police department "shall make frequent inspections of premises for which licenses are issued under this title to ascertain the premises and the devices in the premises are licensed." In fact, §2-302(i) provides that in addition to the director of the department of inspections and permits (the "director"), members of the Amusement License Commission, and ". . . sworn officers of the Anne Arundel County Police Department have the right to enter the premises of a commercial bingo licensee without advance notice during normal business hours and to make inspections of the premises and the commercial bingo operation in order to assure compliance with this subtitle."

The Amusement License Commission is composed of seven members, one of whom is a police officer appointed by the chief of police [§2-111(a)(2)]. The commission's job is to advise

the director on the proposal of ordinances and the adoption of regulations to implement the provisions of the amusement licensing law. The commission is also specifically directed to “issue findings and recommendations in the regulation of commercial bingo games. . .” [§2-112(a)].

The police department receives a copy of every license issued under this title (§2-107), and also a copy of any certificate of permission to transfer to any licensee who takes over a license upon the death of its original holder [§2-109(c)]. The owners and managerial employees of bingo establishments are subject to criminal background and character reviews [§2-311(a)(2)], and are required to be fingerprinted and photographed at a facility of the police department [§2-311(c)]. Confidential information obtained by the county from any source having to do with the personal and financial backgrounds of each owner and managerial employee is provided to the police department.

In short, the police department is authorized by law to exercise significant regulatory authority over bingo operations in the county. While the testimony from the witnesses indicated that the police department does not, in fact, actively participate in the regulatory practice, it is more significant that the law directs that the police be involved. At any rate, the level of police participation may fluctuate, depending on the preferences of the director, the license commission, and the police department itself. Smoothly run and scrupulously honest bingo operations may be the norm in this county, but the comprehensive regulatory scheme adopted by the county to regulate bingo reflects the government’s concern that it remain so. As long as the government interjects the police department into the regulatory oversight of bingo operations, then bingo establishments are “subject to the authority” of the police department. Because of the specific authority granted to the police over bingo operations, §5-102(a)(1)(i) prohibits police officers from engaging in secondary employment in or for bingo establishments.

The second provision that is relevant to this inquiry is §5-102(a)(2), which prohibits an employee from holding any other employment relationship if that relationship would impair the impartiality or independent judgment of the employee. There are currently about 22 police officers who work or are seeking to work at bingo halls. This figure represents almost 10% of the officers who engage in secondary employment. It is not impossible to imagine that the high level of employment offered to police officers may create a preferential environment in the police department toward these employers. For example, it would not be inconceivable that a business which employs 10 or more police officers would expect to see frequent police patrols in the vicinity. That same business might anticipate that a call to 911 might elicit a faster response than a call from a business that hires private security. It is not unreasonable to perceive that favoritism could exist. The fact is, it makes good business for a private employer to hire the employees of an agency that has the authority to oversee its business practices. This relationship creates at the very least the appearance of improper influence, an evil that the ethics law is designed to guard against.

Finally, the ethics commission is concerned about the prestige of office issues raised by police officers engaged in secondary employment as security guards while wearing their police uniforms and using marked police vehicles. Section 5-107 of the ethics law prohibits an employee from intentionally using the prestige of office or public position for that employee’s

private gain or the gain of another. In AO-98-91, the ethics commission addressed the issue of prestige of office raised by officers working secondary employment while wearing their uniforms and using their patrol vehicles. In that opinion, the ethics commission concluded that the benefit to the public of having a visible police presence at public locations outweighed the prestige of office concerns. However, in the present context, the commission is concerned that a large number of police officers working for one or more specific businesses may constitute the use of the prestige of office for the considerable benefit of a private business entity. That private benefit may well outweigh the benefit to the public. Moreover, the fact that almost one half of all county police officers are engaged in private security work, while appearing to be acting as on-duty police officers, is of equal concern as a potential abuse of the prestige of office. The ethics commission believes that the county administration might find it prudent to explore the various facets raised by this issue. Perhaps the concerns of the commission may be addressed by the administration based on policy considerations rather than as an ethics law matter.

Conclusion:

Based upon the provisions of §5-102(a)(1)(i) and 5-102(a)(2), and the reasoning set forth in earlier opinions AO-98-91 and AO-99-176, the ethics commission advises that county police officers may not engage in secondary employment with or for bingo establishments in Anne Arundel County.

September 28, 2004

By: The Anne Arundel County Ethics Commission