

Re: IO-04-103

You inquired whether an employee of the recreation and parks department, who is also employed with a local fitness facility, may organize a rock climbing party at the facility as a recreational opportunity for children in the county. The answer is that the employee may not help organize or participate in any party at the fitness facility.

Section 5-101(a)(2)(ii) prohibits an employee from participating in any matter where one of the parties to the matter is a secondary employer of that employee. There are at least a couple of reasons for this prohibition. In the first instance, the fitness facility would appear to be receiving preferential treatment over similar facilities, simply because the fitness facility hired a county employee. The possibility of receiving preferential treatment would be a significant inducement for local businesses to hire county employees, which in turn confers a benefit to county employees that others may not receive. Second, a secondary employer could put undue pressure on its employee to pursue business opportunities with the county on behalf of that employer, since the employee is presumed to have “connections” in the county.

Another provision of the ethics law of which you should be aware, is §5-102(a)(1)(ii). This section prohibits a county employee from engaging in any secondary employment with an entity that is negotiating, or has entered into a contract with the county that is administered by the employee’s county agency. Simply put, an employee with recreation and parks may not work for a secondary employer that contracts with recreation and parks. See, IO-02-72.

Section §5-102(b) permits this prohibition to be waived by the ethics commission if the employee can establish that the secondary employment will not create a conflict of interest or the appearance of a conflict. A waiver cannot be considered in the absence of pertinent facts. If your employee would like to request a waiver of the prohibition imposed by §5-102(a), the employee will need to disclose the nature of the secondary employment with the fitness facility, and the employee’s job description with the department of recreation and parks. In the absence of a waiver from the commission, the employee will have to terminate the secondary employment relationship if the county or the department of recreation and parks negotiates or enters into any contract with the fitness facility.

Finally, you asked whether the county could be liable for any injuries sustained by a participant at a party sponsored by the county. The ethics commission does not have jurisdiction over this question and suggests that you seek the advice of the office of law.

Thank you for your inquiry.

Sincerely. . .