

December 15, 2004

Re: IO-04-106

You inquired whether, and to what extent, the two of you, both county employees, are prohibited from participating in official county matters that may concern an entity with whom you have a personal contract to sell real property. The answer is that the Public Ethics Law, §§5-101(a)(2)(iv) and (vi) prohibit you both from participating in any matter in which the entity is a party to the matter.

The entity with whom you have contracted is a developer that does a significant amount of business in the county and plans a residential development for the property you are selling. One of you is a community services employee in the county executive's office. You occasionally work with constituents who have concerns about the impact of new development on their communities. The other works in the department of recreation and parks, reviewing subdivision plans for compliance with recreation area requirements. It is possible, if not probable, that you have previously dealt with issues concerning this entity in the normal course of business and it is not unlikely that the property which you have contracted to sell will come before you as development plans progress.

Section 5-101 prohibits a county employee from participating in matters where there may be a conflict between the employee's official duties and the employee's private interests. In subsection (a)(2)(iv), an employee is prohibited from participating in any matter where a party to the matter has a contract with the employee (or the employee's spouse), and that contract could reasonably be expected to result in a conflict of interest. The ethics commission believes that a conflict of interest would appear to exist if you are involved in any matter involving this entity as long while you have a contract with this entity. In subsection (a)(2)(vi), an employee is prohibited from participating in any matter in which a party to the matter is an obligee of the employee, and if, as an obligee, is in a position to affect the interest of the employee. The entity that has contracted to purchase your property is your obligee and may remain so even after the sale is consummated, depending on the terms of the contract. See, In re Tribby, 241 Bankr. 380 (E.D. Va. 1999). As long as there is a valid contract between you and the entity, or there are any obligations outstanding between the you and the entity pertaining to the sale, the ethics law prohibits you from participating in any matter in which the contract purchaser is a party. This result is required even though neither of you makes decisions regarding such matters. It is participation in any form (other than ministerial) that is prohibited.

Finally, it was clear from your letter that you are both familiar with the ethics law and that you are generally aware of the ethics issues created by the contract of sale in this case. The ethics commission commends you for the responsible way that you have handled these questions. The ethics law, §3-103, prevents the ethics commission from sending an unredacted copy of this opinion to the people you listed as recipients of copies of your letter of inquiry, but you are certainly free to do so. Thank you for your inquiry.

Sincerely,

Betsy K. Dawson  
Executive Director

BKD/sm