

April 1, 2004

Re: IO-04-33

You inquired whether an employee in your department may purchase or contract to purchase an item from a client of your department. The employee performs assessments on clients to determine what departmental or outside services or programs should be made available to the client. You indicated that the employee has not performed an assessment on the client who is offering the item for sale, but that the employee may at some point undertake such an assessment.

The ethics law, §5-102, prohibits an employee from contracting with any person subject to the authority of the employee or of the employee's agency. In the department of aging, contracts made between care-giver and client are particularly suspect. As the ethics commission noted in AO-97-114,

The Department of Aging provides information and services to citizens who often do not otherwise have access to services, or who are unfamiliar with the types of services available to them. Some of these same clients are also vulnerable to sales pitches or high-pressure tactics. The Department of Aging finds that frequently it must walk a fine line between providing information about these services on the one hand and protecting its clients from intrusive and unwelcome solicitations on the other.

Even if the contract was made in good faith after arms-length negotiations, a reasonable appearance of a conflict of interest may be created by the coercive nature of the relationship between the employee and the client. Even if the employee read about the sale of the item in a newspaper advertisement, there is still the possibility that subsequent negotiations may have resulted in the employee's favor. Many of the clients of your department are vulnerable and dependent upon the goodwill and assistance of your employees. Taking this factor into account, and construing this prohibition liberally, pursuant to §1-102(c), the ethics commission concludes that a client who participates or seeks to participate in departmental programs may be considered a person "subject to the authority of the employee's agency" in this case. This conclusion will ensure that the employee will not be in the position of recommending services for this client on the basis of any contractual relationship with the client.

Thank you for your inquiry.

Sincerely,

Betsy K. Dawson
Executive Director

