

December 12, 2005

By Electronic & Interoffice Mail

Re: IO-05-77

You inquired whether you may accept an honorarium and/or enter into a licensing agreement with a for-profit entity as part of your agreement to participate as a “faculty” member at a seminar hosted by this entity. For the reasons set forth in this opinion, the ethics commission advises that you may neither accept the honorarium, nor enter into a licensing agreement with the entity.

Specifically, the entity is a company that describes itself as “a leading provider of continuing education seminars in the United States and Canada”. In addition to providing educational seminars like the one-day seminar in which you have been asked to participate, the entity also sells compact discs and reference manuals, based on its seminars. The specific seminar in which you will be a featured speaker, entitled “Storm Water Permitting: Is your Municipality or Business in Compliance (And Will It Stay In Compliance)?”, will be geared toward “engineers, construction and project managers, presidents, vice presidents, business owners and managers, public works and utilities directors, developers, planners, surveyors, property owners and managers, architects, and attorneys”.

You are a professional and managerial employee in a land use-related county agency. The licensing agreement you have been requested to sign permits the private entity to: record your oral presentation for sale or distribution; copy all written materials provided by you for sale or distribution, make your written materials and oral presentation available in digital form for distribution on the internet, or through other means of transmission, and sell reprints of your materials and presentation. Additionally, and perhaps of most significance, is that the provision whereby the entity is granted the authority to use your “name, likeness and biographical information, along with [your] materials and [your] oral presentation to promote [the entity’s] products and services”. The agreement is “non-exclusive” in that you retain ownership of the materials to use as you choose.

Section 5-107 of the Public Ethics Law prohibits an employee from intentionally using the prestige of office or public position for the employee’s private gain or the gain of another. Permitting a private entity to use an employee’s name and title, to promote the entity’s products and services would clearly violate this provision of the law. In a previous opinion, AO-99-105, the commission advised the fire department that it could not authorize a private entity to distribute a video that included a presentation by a fire department employee, in uniform, that had been made for training purposes. Specifically, the commission said that,

The fire department may permit its employees to participate in training sessions for the public, or for portions of the public, while appearing in uniform, as long as this service is determined to be a service benefiting the citizens of the county. The department may not permit the commercial use of this training by any employee or by a third party, such

as a business entity, that could profit from the use of the training, or from the apparent endorsement of the entity's products or services by the county fire department. *See also*, AO-02-23 (prohibiting the use of police photographs by a private entity for charitable fund raising), IO-00-179 (prohibiting the use of the fire department logo by a private support entity).

There is nothing in the ethics law that would preclude you from participating in the seminar as part of your county duties- it is after all, one of the functions of government to disseminate useful information to the public. But because you are doing this service as a county employee, you may not accept any honorarium or other gratuity in excess of a nominal value (\$25) except that you may accept reimbursement to cover reasonable expenses that you actually incur in participating in the seminar. §5-106(d). And since you are not permitted to accept an honorarium, you are not permitted to direct the distribution of the honorarium to a charity of your choosing. You may accept an unsolicited honorarium on behalf of Anne Arundel County, for the county to use as it sees fit, provided that the use will benefit the public and not any particular employee.

Thank you for your inquiry. If you have other questions, please give me a call.

Sincerely,

Betsy K. Dawson
Executive Director