

April 17, 2006

By Electronic & Interoffice Mail

Re: IO-06-23

You inquired whether and to what extent the ethics law would prohibit or limit your spouse from starting a business expediting building permits. For the reasons stated in this opinion, the ethics commission advises that your spouse may undertake this employment only after leaving county employment, but that your spouse should refrain from engaging in any business in Anne Arundel County or with people who are subject to the authority of your agency.

You are a building inspections supervisor, and your spouse is a current employee of the office of personnel, and a former employee of the offices of planning and zoning and the department of inspections and permits. Your spouse would like to start a business as an expeditor of building permits in another county in the state. You stated that if the spouse's business involved any permits in Anne Arundel County, you would recuse yourself from supervising the inspections necessitated by those permits.

There are a number of ethics issues raised by your inquiry. First, §7-5-104(a)(1) and (2) prohibit an employee from assisting or representing a person in any matter before any governmental unit or employee of the county or in which the county has an interest. This provision would prohibit your spouse from working as an expeditor of building permits in this county while still a county employee. This provision would not prohibit your spouse from working in other counties in this capacity.

If your spouse leaves county employment, §7-5-104 would no longer apply to the employment situation, and the only provision of the ethics law that would apply to your spouse as a former employee would be §7-5-105. That provision would prohibit your spouse only from working on any matter involving the county if your spouse previously participated significantly in the matter as an employee, or if your spouse had information not generally available to the public when your spouse engaged in the permit expediting business. Since your spouse is currently an employee of the personnel office, it is unlikely that this provision would apply.

The ethics commission is concerned about the appearance of a conflict of interest that would arise by your spouse's participation in the building permitting process in the same office and with the same people with whom you work on a daily basis. While you could recuse yourself from participating in specific instances, you would still be involved in supervising inspections for business entities that might contract with your spouse, even if your spouse is not

involved in those particular permits. For example, if your spouse engages to work for the ABC Company in another county, but the ABC Company also has permits issued in Anne Arundel County, would it not be reasonable to expect that the company might receive favored treatment by you or the people you supervise?

It could also reasonably appear that the prestige of your position would present your spouse with opportunities that business competitors might not have. A permit applicant could reasonably believe that it would make good sense to seek the assistance of the spouse of a supervisor of inspections. The ethics commission does not mean to impugn your integrity or the integrity of your spouse in reaching this conclusion. The ethics law was enacted to insure that even the *appearance* of a conflict of interest is avoided in the conduct of the business of government.

For these reasons, the ethics commission advises that your spouse may not work as a building permit expeditor in Anne Arundel County or for clients who seek building permits in the county, while your spouse is still employed by the county. The commission further advises that even if your spouse leaves county employment, your spouse should not engage in expediting permits in Anne Arundel County, or work for any clients in other counties who may also be permit applicants in Anne Arundel County.

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

Sincerely,

Betsy K. Dawson
Executive Director