April 27, 2006

***By Electronic & Interoffice Mail***

Re: IO-05-25

You inquired whether you may continue to engage in secondary employment as a real estate agent while you are employed as a zoning inspector for the department of inspections and permits for Anne Arundel County. The ethics commission advises that you may not engage in this employment in Anne Arundel County.

As a zoning inspector, it is your job to investigate complaints of alleged zoning violations in a specific area of the county. You do not initiate investigations in the absence of a complaint although like any person, you may file a complaint if you observe a zoning violation. You are not required to do so. You may not enter onto an alleged violator's property without the consent of the landowner. If you are unable to verify the existence of a zoning violation, you provide the alleged violator with a statement of the allegations. Your position with the county requires that you spend a significant part of each day on the road, investigating alleged violations. You are essentially unsupervised during this time, although you are required to submit daily work sheets detailing how you spend your time.

In your position you have ready access to the county's database of information on all county properties. You can access information about zoning classifications, outstanding non-conforming uses, variances, special exceptions, zoning violations and consent orders. You also have access to plats and maps. While this information is not confidential, it is only available to the public upon specific request, necessitating a trip to county offices. Real estate agents have frequent need of this information and like other members of the public, must come to the county to see it, and must make an appointment and pay a fee to obtain copies of the information. The office in which you work and the employees with whom you work have relevant and extensive knowledge about real properties in the county – information that would be useful to realtors. Section 7-5-107 of the ethics law prohibits an employee from using the prestige of the employee's position for the employee's personal gain. Under this provision, you would not be permitted to use your county computer to access information that would be useful to you in your secondary employment or to other realtors with whom you might work.

Because of the connections between the county office for which you work and the development, sale, and management of real property in the county, the ethics commission does not believe that there are any conditions that can be placed on your secondary employment that would effectively limit the potential for conflicts of interest to arise between your county job and your secondary job. Enforcement of any such conditions would be virtually impossible. While you indicated that you work as a realtor only in the evenings and on weekends, the type of work in which realtors engage requires that they be available to clients as needed and that they take and return phone calls promptly. Because you have a personal cell phone with you when you are out in the field, and because you are out in the field much of the work day, it would be difficult and burdensome for your supervisors to ensure that you are not engaging in secondary

employment during county work hours. It would also be difficult to ensure that you would not be using county resources to obtain information on real properties that other realtors would not be able to obtain as readily or without cost. Under these circumstances, the commission relies on §7-5-102(a)(2), which prohibits an employee from holding "any other employment relationship if that employment relationship would impair the impartiality or independent judgment of the employee."

For these reasons, the ethics commission advises that you may not engage in the sale of real estate in Anne Arundel County while you are employed by the County as a zoning inspector. While you might be able to sell real estate outside of the county, you could not assist either sellers or buyers of any real estate, even outside of the county, if those clients are subject to the authority of your department.

Sincerely,

Betsy K. Dawson
Executive Director