

May 16, 2006

Re: IO-06-27

You inquired whether any provisions of the Public Ethics Law, Article 7, *Anne Arundel County Code*, would restrict you from being a candidate for the Maryland State Senate while you are a member of the Severn River Commission. The answer is that the ethics law neither prohibits your candidacy, nor your ability to serve in both positions if you are elected.

Section 8-403 of the Natural Resources Article, Title 8, of the Annotated Code of Maryland, permits "local governing bodies" with an approved management plan, to establish a scenic river advisory board for each designated scenic river in its jurisdiction. The Severn River was so designated, and the Severn River Commission (the "Commission") became the established advisory board. The county enacted R-130-84, establishing the Commission, (and R. 47-89, reestablishing it), made its existence dependent upon the adoption of a "substantially similar and essentially compatible resolution" by the City of Annapolis. The city approved its own Resolution, 55-84, on the same day. *See*, Ethics Commission Advisory Opinion-00-93.

According to the terms of the mutual resolutions, the Commission was created to provide advice to the county, the city, and the State of Maryland, to enhance and protect the natural, historic, and scenic quality of the Severn River watershed. *Id.* As a member of the commission, you are likely to be considered an "official" rather than an "employee" for purposes of Art. 24, §13-103 of the Annotated Code of Maryland. This provision guarantees the right of all local government "employees" to fully participate in political activity. If you were an employee, the ethics commission could not limit your secondary employment based on the ethics law, because the state has preempted this field. However, this provision of law does not apply to officials, whose right to participate in political activity may be limited by local government. *Id. at footnote 1.*

While the ethics commission will not address the issue of whether your participation in political activity is limited by any other specific provision of the *Anne Arundel County Charter* or *Code* or by state law, the ethics commission will advise you that your candidacy for state office does not appear to create a conflict of interest with your position on the Severn River Commission as far as the ethics law is concerned. If you are elected to the State Senate, you will need to consult with the State Legislative Ethics Committee to determine the propriety of continuing to serve on the Severn River Commission, or with the Office of the Attorney General. The attorney general's office, by letter dated June 9, 2003, has opined that "while the State law limits the ability of a legislator to accept public employment, it clearly permits a legislator to continue in employment held when elected . . ." The Anne Arundel County Office of Law and the ethics commission concur in this opinion.

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

Sincerely,

Betsy K. Dawson
Executive Director