

April 12, 2007

Re: AO-07-11

You have inquired whether the ethics law would prohibit the current contractual volunteer coordinator for the fire department from accepting the newly created merit position with the same title. In addition to the current contractual position, the employee is also a regular member of the Odenton Volunteer Fire Company, and is currently serving as the secretary to the executive board of the Anne Arundel County Volunteer Firefighters Association. The ethics commission advises that the contractual volunteer coordinator may accept the newly created merit position of volunteer coordinator if it is offered, subject to certain limitations on secondary employment and participation in certain matters.

The duties of the volunteer coordinator are set forth in the job description, which provides that the volunteer coordinator assists the "chief in the planning, coordinating, budgeting and operation of the volunteer component of the Anne Arundel County Fire Department." It is a management level position.

The current coordinator has been in this position as a contractual employee for several years. In 2003, by [AO-02-137](#), the ethics commission advised that this same employee could not also serve as the president of the Anne Arundel County Volunteer Firefighters Association, but that the employee could continue to maintain an active membership with a volunteer fire company. The basis for this opinion was the commission's conclusion that:

Unless a member of a volunteer fire company is compensated for services by the company, through contract or through a traditional employer-employee relationship, a volunteer would not be "employed by" the volunteer company within the meaning of §3-105(b)(1). A volunteer would not have either a legal or economic interest in the volunteer company, unless the volunteer was also an officer or held some other position of responsibility in the company. Mere membership in a private nonprofit organization does not generally fall within the definition of an "interest" in the organization. *See*, AO-00-09, IO-01-117. Therefore, unless a county fire department employee is employed by, or has a position of authority in a volunteer fire company, §3-105(b)(1) would not prohibit the county employee from also being a member of a volunteer fire company.

The law has changed since this opinion was issued. The new law also prohibits an employee from having a contractual relationship with an entity that is subject to the authority of the employee's agency. Specifically, the old §3-105(b) provided that:

(b) An employee may not:

(1) be employed by, or have an interest, in an entity subject to the authority of the employee or the authority of the County agency . . . with which the employee is affiliated, or any entity that . . . has entered a contract with that agency. . .

In 2003, the law was changed to read as it does today at §7-5-102(a):

(a) . . .an employee may not:

(1) be employed by, *have a contract with*, or have a financial interest in:

(i) a person subject to the authority of the employee's governmental unit. . .

(ii) a person who . . . has entered into a contract with the county that is administered by the employee's governmental unit

(iii) an entity that is a subcontractor. . .

Membership in the volunteer company does not in and of itself create a contractual relationship. Rather, the existence of mutual rights and responsibilities between the fire company and the volunteer member is the key factor to be considered. The website of the Odenton Volunteer Fire Company states that: "As a volunteer organization, the OVFC cannot compel its members to work any specified number of hours . . ." (<http://www.ovfc28.org/operations.php>). The ethics commission concludes that membership in a volunteer company does not constitute a contractual relationship within the meaning of §7-5-102(a). *See, Chisholm v. Hyattstown Volunteer Fire Dep't*, 115 Md. App. 58, 67 (1997). Because there is no contract between a volunteer company and its volunteers, §7-5-102(a) does not apply to this situation.

Section 7-5-104 prohibits an employee from assisting or representing an entity in any matter before any governmental unit or employee of the county or in which the county has an interest. As the secretary of the executive board of the AACVFA and a member of its board of directors, the volunteer coordinator is clearly a representative of an entity that advocates for its membership before the county. For this reason, and in accordance with its earlier opinion, AO-02-137, the ethics commission advises that the fire department's volunteer coordinator may not serve as an officer or member of the board of directors of the AACVFA.

While the fire department's volunteer coordinator may engage in secondary employment as a volunteer firefighter, there are a number of provisions in the ethics law that would limit the coordinator's ability to participate in specific matters. In addition to prohibiting the volunteer coordinator from serving as an officer or director of the AACVFA, §7-5-104 would prohibit the volunteer coordinator from assisting or representing the volunteer fire company to which the coordinator belongs, before the fire department, or as to any matters in which the county may have an adversarial interest.

Another law, §7-5-101 on non-participation, provides that:

(a) . . . an employee may not participate in a matter if: (1) the employee. . . has an interest in the matter . . . or (2) any of the following is a party to the matter: (i) if the contract

reasonably could be expected to result in a conflict between the private interest and the official County duties of the employee, a business entity that is party to a contract with the employee, . .

An interest in the matter that would restrict the volunteer coordinator’s participation in a matter would involve an economic or legal interest. Any matter that could affect a volunteer’s financial interest, such as LOSAP, or work conditions, are the types of interests that would be included in this prohibition. An exception to the prohibition would apply if the volunteer coordinator’s duties with regard to the matter, involve a “non-discretionary administrative duty that does not affect the disposition of or a decision with respect to the matter involved.

For these reasons, the ethics commission advises that the current contractual volunteer coordinator may be offered and may accept the merit position of volunteer coordinator, but only if that coordinator resigns from any position on the board of the AACVFA, and subject to the restrictions on participation described in this opinion.

Thank you for your inquiry.

Anne Arundel County Ethics Commission

By: \_\_\_\_\_  
Betsy K. Dawson, Executive Director