

March 13, 2007

AO-07-12

By electronic mail only

You have asked the ethics commission whether a member of the Severn River Commission, who is also employed by the United States Naval Academy, can participate in Severn River Commission deliberations regarding the Naval Academy Dairy Farm. The ethics commission's opinion is that he cannot participate in any way in such deliberations.

As you have explained it, an employee of the Naval Academy has been nominated to the Severn River Commission by the County Executive and confirmed to that position by the County Council. At this time, the Naval Academy continues to own the Dairy Farm property in Odenton, although various plans have been offered and are being discussed regarding the future use and disposition of the property. You anticipate that, consistent with its charter, the Severn River Commission will be considering and discussing the environmental impact and other effects of the various plans on the Severn River watershed. The Severn River Commission may also take some as-yet-unspecified formal action, such as approving or disapproving various proposed uses of the property. You have asked whether the new member can (a) participate in such deliberations and (b) vote on any actions or resolutions the Severn River Commission may take regarding the Dairy Farm.

The ethics commission has previously held that a member of the Severn River Commission who is nominated by the County Executive and confirmed by the County Council is considered to be a "county employee" for purposes of the public ethics law. AO-00-93; see also Public Ethics Law § 7-1-101(5) ("employee" for purposes of the ethics law includes a member of any County board, commission, authority, or similar entity). From the standpoint of the ethics law, therefore, the new member's employment by the Naval Academy is considered to be "secondary employment," and the question is whether his participation in Severn River Commission deliberations regarding the Dairy Farm conflicts with his secondary employment as a Naval Academy employee.

There are several provisions of the ethics law that may bear on this question. First, section 7-5-102(a)(1) provides that a county employee may not also be employed by:

- (i) a person subject to the authority of the employee or of the employee's governmental unit;
- (ii) a person who is negotiating or has entered into a contract with the County that is administered by the employee's governmental unit.

The Naval Academy clearly constitutes a "person" for these purposes, and the Severn River Commission apparently has at least some authority over the future of the Naval

Academy's property. The elements of the first prohibition cited above are thus met in this instance. The second condition might also be implicated, to the extent the Severn River Commission has any impact on any contracts that may be entered by the county with respect to future use the Dairy Farm.

Second, section 7-5-102(a)(2) provides more generally that a county employee may not "hold any other employment relationship if that employment relationship would impair the impartiality or independent judgment of the employee." The possibility exists that the new member's employment by the Naval Academy would impair his judgment in his role as a member of the Severn River Commission considering the use of the Naval Academy's property. Thus section 7-5-102(a)(2) would bar the new member's secondary employment by the Naval Academy.

The more general conflict of interest provisions in section 7-5-101 may also apply. For example, section 7-5-101(a)(2)(ii) provides that the county employee cannot participate in a specific matter if another party to the matter is a "business entity" which also employs the county employee. It is clear that the Naval Academy is a "party" to the disposition of the Dairy Farm and, although the matter is not free from doubt, we believe the Naval Academy should also be considered a "business entity" for this purpose, at least to the extent that the specific matter under consideration involves the disposition of property owned by the Naval Academy and in which the county may have an interest. More generally, section 7-5-101(a)(1) provides that a county employee may not participate in a matter if the employee has an interest in the matter that is distinguishable from that of the public generally. Obviously the new member's potential interest in furthering the Naval Academy's preferences regarding the disposition of the Dairy Farm could differ from the county's and/or the Severn River Commission's. Section 7-5-101(a)(2)(iv) similarly prohibits an employee's participation in a contract if the contract reasonably could be expected to result in a conflict between the private interest of a business entity that is party to the contract and the county employee's duties. Again, to the extent the Naval Academy and the county may enter into a contract regarding future use of the Dairy Farm, this provision could be implicated.

Finally, two very broad provisions of the ethics law could apply here. Section 7-5-108 provides that a county employee "may not disclose or use confidential information acquired by reason of the employee's ... public position and not available to the public for ... the economic benefit of another." It would be very difficult for the new member to avoid using or disclosing in his employment with the Naval Academy any confidential information acquired in the course of the Severn River Commission's deliberations regarding the Dairy Farm. Similarly, section 7-5-107 bars an employee from using "the prestige of office or public position" for the private gain of another person or entity. Although we have no reason to believe that the new member would intentionally seek to further the interests of the Naval Academy, rather than solely the interests of the county, if he participates in Severn River Commission discussions regarding disposition of the Dairy Farm, a reasonable observer might conclude that he was doing so. Consequently, even these two provisions could be implicated in this matter.

Section 7-1-102(a)(2) of the ethics law states that the people's "confidence and trust is eroded when the conduct of the County's business is subject to improper influence or even the appearance of improper influence." Section 7-1-102(c) also requires that the ethics law should be "liberally construed to accomplish its purpose." Therefore, for the reasons set forth above, the new member should not participate in any way in the Severn River Commission's review of or deliberations regarding the Naval Academy Dairy Farm. Assuming he completely recuses himself and does not participate in any way in such deliberations, he may serve on the Severn River Commission notwithstanding his secondary employment by the Naval Academy.

Anne Arundel County Ethics Commission