



ETHICS COMMISSION ANNE ARUNDEL COUNTY

July 2, 2007

By Electronic Mail Only

Re: AO-07-21

You inquired whether the ethics law prohibits an off-duty police officer from working private security for in an establishment where alcohol is sold or served if the sale or service of alcohol is not the primary business of the establishment. This issue arises because of an apparent conflict between an opinion issued by the ethics commission in 1999 and the long-standing secondary employment policy administered by the police department. For the reasons stated herein, the ethics commission reaffirms the position it adopted in [AO-99-176](#) and advises that a police officer may not engage in secondary employment in any establishment where liquor is sold or served, regardless of whether the establishment's primary business comes from the sale of food as opposed to alcohol.

Section 7-5-102, formerly §3-105(b)(1) of the ethics law, prohibits an employee from "being employed by. . . a person subject to the authority of the employee or of the employee's governmental unit." Based upon this law, the ethics commission issued AO-99-176, advising that a police officer may not be employed by a restaurant where liquor is served for consumption on the premises (a class H license.)

A liquor licensee is subject to the authority of the police department in specific ways. Rule 3.02 of the Rules and Regulations of the Board of License Commissioners for Anne Arundel County, adopted pursuant to Article 2B, §16-301 of the Maryland Code, provides that:

1. Licensees shall cooperate with. . . members of the Police Department. . . whenever any such person(s) are on official business;
2. Licensees shall . . . conform with all lawful requirements specified by . . . members of the Police Department whenever any such person(s) are on official business;
3. Licensees shall keep on their premises records containing legal names, aliases, addresses, ages and Social Security numbers of all persons employed by them. Such

records shall be open for inspection at all times by duly authorized representatives of . . . the Police Department. . .

The police department written directive at IV(C) provides that:

Secondary employment may be approved in businesses which sell or dispense alcoholic beverages, providing: the business is not a tavern or combination restaurant and tavern; the sale or dispensing of alcoholic beverages is not the primary service of the business; the employed officer will not be required to perform security or law enforcement functions associated to the sale or dispensing of alcoholic beverages, i.e., checking I. D. or evicting intoxicated patrons (bouncer); or [sic] the officer will not sell, serve, nor handle alcoholic beverages in any fashion.

Section 7-1-104 of the ethics law requires that employees shall comply with other provisions of law, regulations, and any applicable policies and procedures relating to conflicts of interest, financial disclosure, or lobbying, even if they are more stringent than the ethics law. The police department directive is less stringent than the ethics law and for this reason, is not controlling.

You have taken the position that having a uniformed officer on the premises of a restaurant where alcohol is served is a public safety matter that should override the ethics law prohibitions. You stated that uniformed police officers provide a measure of security to the public that cannot be afforded by private security officers who have no police powers. If local restaurants routinely require regular on-site police protection, then there are far larger issues facing the county than the issue of secondary employment for police officers. That may be a matter for the executive and legislative branches to address. Regardless of whether there may be a legitimate need to staff local restaurants with uniformed officers, the fact remains that there is a conflict of interest that exists when a police officer, wearing a county uniform, and appearing to be acting as an employee of the county, is acting primarily on behalf of, and being paid by, a secondary employer who is subject to specific police regulatory authority. Following the reasoning of the police department policy, could not the argument be made that uniformed officers should also be permitted to work as bartenders and bouncers? Would it not provide an additional measure of “public safety” to have police officers serving drinks?

Private employers who are subject to the authority of county licensing or enforcement agencies like the police department would surely conclude that their best interests are served by hiring employees affiliated with those licensing or enforcement agencies, whether they be police officers, grading inspectors, or zoning enforcement officers, to name a few examples. Those employees would owe a measure of loyalty to the secondary employer that they would not owe to other licensees. And a private employer who holds a liquor license and who employs two, three, or more police officers might reasonably expect a little extra security from the police department. Private

employers who hire private security guards might also reasonably expect a little less security from the department. The perception might be wrong, but it is not unreasonable.

The ethics law makes no distinction between police officers and other county employees. The ethics commission has, by opinion, permitted police officers to use county resources- the uniform, police vehicle, and weapon - for personal gain, where the benefit to the public arguably outweighs the private and incidental benefit to the police officer. See, [AO-98-91](#). This exception was based on the conclusion that the use of the uniform, weapon, and patrol vehicle would protect the individual officer as well as the public. This dispensation is not accorded any other county employee- no employee outside of the police department is permitted to use county resources in secondary employment. The ethics commission will not extend an exception to the secondary employment prohibitions of §7-5-102 for police officers when the commission believes that such secondary employment creates a very reasonable appearance of a conflict of interest. Changes that permit police officers to work for liquor licensees must come from the legislature.

For these reasons, the ethics commission advises that the police department may not permit police officers to work as private security for any entity that is a liquor licensee. Additionally, the police department should take affirmative steps to ensure that any ongoing secondary employment for these types of secondary employers is discontinued as soon as is practicable.¹

The Anne Arundel County Ethics Commission

By: _____
Betsy K. Dawson, Executive Director

¹ Commission member, P. Thomas Shanahan, took no part in the discussion of, or vote on this matter.