

April 2, 2007

Re: AO-07-23

You inquired whether you, as a member of the Board of Appeals, may also work for the Anne Arundel County Board of Education. You also inquired whether a member of the county council could be employed by the board of education. The ethics commission advises that a member of the Board of Appeals may work for the school board, subject to certain conditions. However, because you are not a member of the county council, the ethics commission declines to address your second question. See, §7-3-101.

The Anne Arundel County Charter establishes the qualifications for members of the board of appeals, which is an independent agency. *Anne Arundel County Charter*, §601.

The Public Ethics Law, §§7-5-102 through 7-5-104, regulates secondary employment. Since the board of education has no contracts with the county that are administered by the board of appeals, and is not regulated by, or subject to the authority of the board of appeals, there are only two provisions of the ethics law that might apply to your inquiry.

Section 7-5-104(a)(1) prohibits an employee from assisting or representing a person in any matter before any governmental unit or employee of the county. As an employee of the board of education, you would not be able to participate in duties for the board that could involve the county government if that involvement could become adversarial.

Section 7-5-102(a)(2) of the ethics law prohibits an employee from holding any employment relationship if that relationship would impair the impartiality or independent judgment of the employee. The ethics commission rarely relies on this provision exclusively if other provisions of law do not also prohibit the secondary employment. In this case however, because of the ongoing and occasionally adversarial relationship between the county and the school board, the ethics commission looked closely at this section of law in considering your inquiry.

The specific position about which you inquired would be in the office of the local accountability coordinator, helping to administer state mandated educational assessments. Your work might involve direct interaction with school employees, but not with any employees of the county government. Although the local accountability coordinator has budget responsibilities that would necessitate interaction with county budget office and other employees, you would not be involved in this activity. Based on the nature of this specific position, the ethics commission concludes that this secondary employment would not in and of itself impair your impartial and independent judgment as a member of the board of appeals. The commission further concludes that your duties, being mandated by the state, would not include matters adversarial to the county's interests.

If you do accept secondary employment with the school board, there is another provision, §7-5-101, which prohibits an employee from participating in any official duties in which a secondary employer may have an interest, different from the interest of the general public. Since the school board is a state agency that is generally exempt from the county zoning article pursuant to §18-2-101(b), it is unlikely that the school board have any matters before the board of appeals. Should such a matter arise, where for example, the school board would provide testimony to the Board of Appeals, you would be required to abstain from participating in that matter.

For these reasons, the ethics commission advises that as a member of the Board of Appeals, you may accept secondary employment with the school board in the office of the local accountability coordinator.

Thank you for your inquiry. Please call the staff if you have any questions.

The Anne Arundel County Ethics Commission

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Betsy K. Dawson, Executive Director