

April 11, 2007

Re: AO-07-27

You inquired whether, as a member of the Planning Advisory Board (PAB), you may host a monthly one-hour radio show on WRYR, a local station owned by the group South Arundel Citizens for Responsible Development (SACReD).¹ You are a licensed master gardener intern. The gardening show will be part of a monthly rotation that will include political, environmental, and other one-hour radio broadcasts. The ethics commission advises that you may engage in this activity, subject to certain limitations on your participation in PAB activities pursuant to §7-5-101 of the ethics law.

SACRed is a non-profit citizen's advocacy group. It advocates, litigates, and otherwise involves itself in many of the planning and zoning issues that occur in South County. According to its website, at: <http://www.sacred-online.org/>:

WRYR-LP is one of the first Low Power FM radio stations granted a license in the nation, and the *only* station owned and operated by an environmental organization, the *South Arundel Citizens for Responsible Development* (SACReD).

WRYR-LP 97.5 FM radio is a new and creative means of reaching out to the Chesapeake Bay communities. WRYR-LP is operated at a grass roots level with a volunteer staff, much donated equipment, and funding contributed by businesses and individuals throughout the communities we serve. WRYR-LP's programming reflects the mission and goals of its parent organization, SACReD, and includes information on issues of local interest such as the environment and smart growth, local news, music and entertainment, health and lifestyle information, and other programming of interest to the eastern and western shore communities served by the station. WRYR-LP is a non-profit, non-commercial LPFM radio station, supported by its listeners – the Maryland Chesapeake Bay communities of Anne Arundel, Calvert, Queen Anne, Talbot, Dorchester, and Caroline Counties, as well as Maryland's capital city of Annapolis. The call letters, WRYR, reflect the station's motto: "*We aRe Your Radio*".

Many of the issues of importance to SACRed come to the PAB for its consideration and recommendation to the county administration.

Prior to the your appointment to the PAB, you worked with WRYR in a volunteer capacity (there are no paid employees) as an advisor to the board. You stated that there is no formal board of directors *per se* and the website does not provide information about the

¹ According to the PAB member, SACRed has applied to divest itself of the radio station, a move that is may or may not be approved. The approval process may take a year and a half.

operational leadership of the organization. You terminated your informal affiliation with WRYR upon your appointment to the PAB.

The PAB is an advisory body that is expected to promote the county's interests from the perspective of the voting citizens of the county. See, IO-00-194 and §532-533, *Anne Arundel County Charter*. It reports to the planning and zoning officer and the county council. The county executive appoints the members whose terms are coterminous with the executive.

The secondary employment provisions of the ethics law are §§7-5-102, 7-5-103, and 7-5-104. As a volunteer with the county, a member of the PAB is subject to these rules. In the present case, it appears that the only potentially applicable provision may be §7-5-102, and the applicability of that provision is questionable.

That provision, at subsection (a)(2) states that an employee may not: “hold any other employment relationship if that employment relationship would impair the impartiality or independent judgment of the employee.” The first issue before the ethics commission is whether a PAB member who hosts a radio show has an employment or contractual relationship with WRYR, and its parent organization, SACReD. If the answer to this issue is that such a relationship exists, the next issue is whether that relationship would impair the impartial or independent judgment of the member as to her duties to the PAB and the county.

The ethics commission rarely relies solely on the impairment provision of §7-5-102(a)(2) to bar secondary employment. In this case, the so-called “contractual” relationship between the member and the radio station is voluntary and presumably terminable by either party at will. Under these circumstances, the commission concludes that voluntary participation as a gardening show host on the radio for one hour a month will not inherently impair your impartial or independent judgment.

Section 7-5-101 is applicable however, to restrict your participation in certain matters. That provision at subsection (a)(2)(ii) prohibits a county employee from participating in any matter in which a business entity that employs a county employee is party. While you would not be an “employee” of WRYR/SACReD in fact, your relationship with the radio station and its parent company could reasonably create the appearance of a conflict of interest as to those issues on which WRYR or SACReD take a position. People could reasonably assume that you would have some loyalty to the organization that offered you an opportunity to host a radio show. For this reason and in order to avoid even the appearance of partiality, you may not participate in any PAB matters in which WRYR/SACReD has an interest. This prohibition would extend to any matters in which WRYR/SACReD has taken a public position in support or opposition, provided testimony, or otherwise become involved.

As long as these matters occur infrequently and do not significantly interfere with your duties to the PAB, the ethics commission advises that you may host a gardening show on WRYR radio. If you find that you must recuse yourself from participating in PAB matters on more than an infrequent basis, the ethics commission will reconsider the question of this secondary employment.

Thank you for your inquiry.

Sincerely,

Betsy K. Dawson
Executive Director