



**ETHICS COMMISSION
ANNE ARUNDEL COUNTY**

July 30, 2007

By Electronic Mail Only

Re: AO-07-35

A number of the members of the Anne Arundel County Commission on Disabilities Issues requested general advice regarding the following issues:

1. Given the composition of the commission that is required by the county code, §3-2A-103, to what extent do the ethics law provisions regarding secondary employment apply to restrict the types of secondary activities/employment in which individual commission members may engage?
2. Given the powers and duties of the commission that are set forth in the county code, §3-2A-109, to what extent does §7-5-104(a)(2) prohibit the commission or its members, acting on behalf of the commission, or in their personal or professional capacities, from publicly advocating a position on a disability or other issue that may be in opposition to the county's official position?
3. To what extent does §7-5-104 of the ethics law apply to prohibit the members, in the course of their secondary activities/employment, from assisting or representing clients or employers before a county employee or agency, or in any matter in which the county has an interest?
4. May the commission support pending legislation in the county council and/or in the state legislature? May it support bills that the county executive does not support or actively opposes? Is the commission required to seek and obtain the prior approval of the administration before supporting legislation?

With regard to the last question, the ethics commission advises that its jurisdiction is limited. It is authorized to apply the ethics law to the conduct of individual employees (which includes volunteer members of boards and commissions). It is not empowered to provide advice to the disabilities commission with regard to the scope of *its* powers and duties. So as to question #4, the ethics commission must defer to the office of law to provide the requested advice.

Background:

The commission on disabilities issues was created by executive order during a previous administration. The commission created bylaws providing a framework for its operations. The commission continued in existence through the next administration, and during the last months of that administration, Bill 06-57 was unanimously enacted, codifying the commission.¹ According to §3-2A-102, of Article 3, Title 2A of the Anne Arundel County Code, the commission's purpose is:

to promote and enhance the quality of life for persons with disabilities by *advising the County Executive and the County Council* on the coordination and development of government policies, programs, services, and allocation of resources for persons with disabilities and by proposing the means to meet the needs of persons with disabilities. (*Emphasis added.*)

The composition of the commission is set forth in §3-2A-103 and consists of 28 members appointed by the county executive. Of that total membership, the 21 voting members shall be selected from the following groups:

- persons with a disability;
- family members of persons with a disability;
- representatives of organizations or agencies that provide services for or represent persons with disabilities;
- persons interested in improving the quality of life for persons with disabilities; or
- persons having expertise in matters pertaining to persons with disabilities.

The remaining seven members, described as “*ex officio*,” come from county and other governmental agencies.

The powers and duties of the disabilities commission are set forth in §3-2A-109 as follows:

Among its powers and duties, the Commission shall:

- (1) review available services and activities for disabled persons, gather data regarding their needs, and review reports and publications of governmental agencies that provide services and support to persons with disabilities;

¹ The law concerning the disabilities commission may be accessed at: [http://www.amlegal.com/nxt/gateway.dll/Maryland/annearundelco_md/article3boardscommissionsandsimilarbodie/title2adisabilitiescommission?f=templates\\$fn=altmain-nf.htm\\$q=3-2A-109%20\\$x=server\\$3.0#LPHit1](http://www.amlegal.com/nxt/gateway.dll/Maryland/annearundelco_md/article3boardscommissionsandsimilarbodie/title2adisabilitiescommission?f=templates$fn=altmain-nf.htm$q=3-2A-109%20$x=server$3.0#LPHit1)

(2) review County, State and federal legislation that may impact persons with disabilities and *make recommendations to the County Executive, County Council, and the County delegation to the State legislature regarding legislation;*

(3) recommend ways of maximizing the use of facilities and services available to persons with disabilities;

(4) provide direct communication among disabled persons, private and public organizations, and the general public regarding programs and services for persons with disabilities;

(5) assist interagency planning groups and special task forces to identify and assess needs of persons with disabilities;

(6) identify barriers to service delivery and *advocate for services to persons with disabilities in the County;*

(7) promote the coordination of services among all public and private agencies, departments, and organizations, which provide services and programs to persons with disabilities; and

(8) identify and recommend to the County Executive sources of State and federal financial assistance available for the purpose of expanding or improving services and programs for persons with disabilities. (*Emphasis added.*)

Discussion:

The disabilities commission members' request for advice raises issues under several provisions of the Public Ethics Law. The ethics laws apply to the members of the commission because members of county boards or commissions are considered to be "employees" for purposes of the ethics law. [§7-5-101\(5\)](#).

First, [§7-5-102\(a\)\(2\)](#) provides that, with some exceptions, an employee may not "hold any other employment relationship if that employment relationship would impair the impartiality or independent judgment of the employee." This provision would apply to some of the members of the commission but for the exception found in [§7-5-102\(b\)\(4\)](#). That exception overrides the secondary employment restrictions for "a member of a board, commission, authority, or similar entity who holds the employment or financial interest when appointed if the employment or financial interest is publicly disclosed to the appointing authority, the Ethics Commission, and, if applicable, the County Council before confirmation." Since the ordinance requires appointment of members who belong in some specified way to groups with interests in disability issues, the ethics commission presumes that the appointing authority and the county council were apprised of these

“employment or financial interests.”² This exception does not however, free the commission members from operating within the constraints imposed by other provisions of the ethics law. See, Maryland State Ethics Commission Opinion [93-13](#), and [IO-02-76](#), and [IO-00-186](#).

The other constraints imposed by provisions of the ethics law may significantly impact the ability of some members to perform the duties for which they were appointed. Section [§7-5-101](#) prohibits an employee from participating in matters in which the employee (or a qualifying relative) has an interest or which involves parties with which the employee has certain employment or business relationships. A member of the disabilities commission who is employed by a party to a matter before the commission would therefore not be able to participate in that matter for example. (State Ethics Commission Op 93-10.)

Sections [7-5-104 \(a\)\(1\) and \(2\)](#) prohibit an employee from assisting or representing a person in any matter “before any governmental unit or employee of the County; or . . . in which the County has an interest.”³ The ethics commission has interpreted this prohibition to apply whenever the county has a legal or economic interest in a matter that may become adversarial or competitive with the interest of the person being assisted or represented by the county employee. See, [IO-06-50](#), [IO-03-85](#), [IO-00-114](#), [IO-99-76](#), and [AO-99-09](#). Generally, this provision would prohibit members of the disabilities commission from assisting or representing clients, customers, or any other persons or entities in any matter in which the county has an adversarial or otherwise conflicting legal or economic interest. For this prohibition to apply, the county must have an actual interest in the matter. It is not enough to trigger the prohibition that the county merely *has an opinion* or *is interested* in a matter. See, [AO-02-151](#), [IO-01-117](#).

Finally, [§7-5-107\(a\)](#) prohibits the intentional use of the prestige of the employee’s position for the employee’s private gain or the gain of another. This provision would bar a member of the disabilities commission from using any reference to commission membership except for official commission business (or for resumes or related matters). A member may not use the title of commission member to advertise for outside employment or to advocate on any issue, unless the advocacy is undertaken as part of the business of the disabilities commission.

Conclusions:

Pursuant to the ethics law provisions discussed in this opinion, the commission advises as follows:

² Unfortunately there was no disclosure provided to the ethics commission. Had disclosure been made as the law requires, the ethics commission could have provided the appointees with more timely guidance as to secondary employment and participation prohibitions.

³ Statutory exceptions to this prohibition permit the “performance of usual and customary constituent services,” “assistance to or representation of an employee without compensation in an employment related matter by an employee other than an elected or appointed employee,” and “assistance or representation that is authorized by law or contract.” [§7-5-104\(b\)](#).

