May 24, 2007

By electronic mail only

Re: AO-07-38

You inquired whether you may serve as the webmaster for the London Town Foundation, Inc., concurrently with your position as the county government's webmaster. You are employed in the office of information technology as a systems analyst. The ethics commission advises that you may participate as the foundation's webmaster, subject to the conditions set forth in this opinion.

The London Town Foundation, Inc., a private non-profit entity, manages the Historic London Town and Gardens, a public facility owned by the county. This partnership, which has been in existence for several years, was formalized by a 10-year operating agreement in 2003. It is subject to automatic renewal unless expressly terminated. The county provides a grant to the foundation to operate the facilities of the park, and the foundation also engages in fund raising activities to support the facilities.

You currently serve on the board of trustees of the foundation. The bylaws of the foundation authorize the appointment of between six and 20 members to the board of trustees, one third of whom, but not more than six, are appointed by the county executive. The other directors are elected by the membership. All of these directors serve for a period of three years. You serve in your personal capacity, appointed by the board to fill a vacancy.

Information about the park is available on its website, at: http://www.historiclondontown.org/. The website is provided as a link on the county government's website, but it does not use the same server or domain as the county. The London Town website refers to the foundation, and provides a mailing address, but the foundation does not currently have another website.

As a county employee, most outside activities in which you engage are considered to be "secondary employment" under the Public Ethics Law, §§7-5-102 – 104. The secondary employment provisions apply in most cases regardless of whether an employee is engaged in the outside activity for compensation or as a volunteer. In this case, you would provide your services to the foundation on a voluntary basis.

The first provision, §7-5-102, applies only to prohibit secondary employment with any entity that has a contractual relationship with the county that involves the employee's agency. While the foundation has a contractual relationship with the county that involves the department of recreation and parks and the office of planning and zoning, it does not appear to have any connection to the information technology office. For this reason, unless the ethics commission concludes that your relationship with the foundation would impair your independent and impartial judgment as a county employee, this provision does not apply to you.

The second provision on secondary employment, §7-5-103, prohibits an employee from engaging in secondary employment with any entity that has a contract with the county, if "the duties of the employee include matters substantially relating to or affecting the matter of the contract." Your duties do not involve the county's contract with the foundation in any way.

Finally, §7-5-104 prohibits an employee from assisting or representing an entity in "any matter" before a government agency or employee, or in which the county has an interest. This provision applies to non-compensated work and it does apply to you under certain circumstances. As a member of the board of trustees in a purely personal capacity, you are not permitted to assist the foundation in any matter in which the county has an interest, if there is any chance that the interest of the county could become competitive or adversarial to the interests of the foundation. *See, e.g.*, IO-04-102, IO-01-149, IO-01-114, IO-00-114, AO-99-197, and AO-98-154. Consequently as a member of the board of trustees for the foundation, you may not participate in negotiations with the county over contractual or budget issues. However, it is unlikely that serving as the foundation webmaster will involve you in any issues with the county.

Additionally, §7-5-107 prohibits an employee from using the prestige of the employee's position for the gain of another. This provision means that you may not use county resources, including county web content, or even your job title, on behalf of the foundation.

Subject to these conditions, the ethics commission sees no problems or potential problems in your assuming the duties of webmaster for the foundation.

Thank you for your inquiry. Please call if you have additional questions.

The Anne Arundel County Ethics Commission

By: Betsy K. Dawson
Executive Director