



ETHICS COMMISSION
ANNE ARUNDEL COUNTY

August 14, 2007

By Electronic Mail Only

Re: AO-07-55

You inquired whether two private entities with which you or a qualifying relative are affiliated, may submit bids in response to a county RFP to provide transit service in Glen Burnie. The ethics commission advises that both of these entities may bid on this proposal and may contract with the county to provide this service, subject to one condition, described below.

Both entities are private bus companies. One of the entities is a corporation in which you are an employee, serving as the controller and the assistant general manager. The other entity is owned by two of your relatives, one of whom is a “qualifying relative” under §7-1-101(22). You have no financial interest in the latter entity.

There are several provisions of the ethics law that are relevant to your inquiry. The first two provisions are relevant only to the entity with which you are employed. Section 7-5-102 (a) provides that an employee may not be employed by, have a contract with, or a financial interest in any entity that is negotiating or has entered into a contract with the county “*that is administered by the employee’s governmental unit.*” The ethics commission assumes that the county council - your governmental unit – would have no part in the administration of this contract.

Section 7-5-103 provides that an employee may not be employed by or be an agent of any party to a contract with the county if the “*duties of the employee include matters substantially relating to or affecting the subject matter of the contract.*” Again, the ethics commission assumes that the duties of the county council have no bearing on the contract.

If your employer were awarded the contract with the county, §7-5-104 would prohibit you from assisting or representing your employer as to any aspect of this contract. To the extent that you are able to delegate your duties to other employees of the entity, this prohibition should present no problems. However, if the duties cannot be wholly delegated to others, the ethics law would prohibit your continuing employment with this entity. There is no exception or waiver to this prohibition in the ethics law. As a council member with an interest in a contract, any communications you would have with county employees charged with administering this contract could reasonably create an appearance of undue pressure or favoritism. This prohibition would not prevent the award of the contract to the entity with which you are employed, but it would prevent your continued employment with that entity.

If the contract were awarded to either entity, §7-5-101 would prohibit you from participating in any matter in which you or a qualifying relative have an interest, different from

that of the general public. This restriction means that in your capacity as a council member, you would not be permitted to participate in any legislation that could affect the contract, including budget matters.

For the reasons stated above, the ethics commission advises that both entities may bid on the contract, and that either entity may contract with the county if awarded the contract. If you are employed by the winning bidder, you may not assist or represent that entity - your secondary employer - in any matter related to the contract. As a council member, you may not participate in any matter regarding the contract if you or a qualifying relative have an interest in the matter.

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

The Anne Arundel County Ethics Commission

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By: Betsy K. Dawson, Executive Director