

May 13, 2008

By Electronic Mail Only

RE: AO-08-07- Supplemental

You inquired about the propriety of awarding a contract to an entity where the president and vice-president of the entity are two county firefighters. The Ethics Commission's initial opinion, AO-08-07¹, advised that under §7-5-104(a)(1) and (2) of the Public Ethics Law, employees may not assist or represent a person or entity in any matter before any agency or county employee, or in which the county has an interest. The opinion concluded that the firefighters would be violating this provision of law by contracting with the county.

In response, the two firefighters executed an irrevocable Power of Attorney, granting to the father of the entity's president the authority to deal with the county in all matters pertaining to the contract. The Power of Attorney was transmitted to the county with a cover letter signed by the son.

Various public records and additional information provided to the Ethics Commission by the president reveal that the father has received no reported compensation from the entity during the period from 2005 to 2007. During that same period, the entity employed an average of 19 employees.² The father's name did not appear on that list.

The two firefighters are the sole owners of the entity, each holding 50% of the shares of the corporation. There is no board of directors and the two firefighters are the only two officers.

The president of the entity advised that his father did assist the entity in three previous contracts with the county. The father, a former county employee of many years with the department of public works, is clearly knowledgeable in the preparation of contract bids, and with the engineering requirements of the various contracts. His contributions to the entity, while significant, are more in keeping with the duties of a consultant, not a day-to-day manager. The only logical inference that can be made from the type of participation by the father in these contracts and the absence of any compensation to him for his services is that he has been simply helping out his son.

¹ The opinion as originally issued was mis-numbered as AO-07-08 and in his letter to the Ethics Commission of April 28, the president mistakenly referred to it as AO-08-08. In the website version, and from here on, reference will be made to the correct number.

² The president's spouse is also an employee of the entity.

It is noteworthy that even though the Power of Attorney was executed and became effective on March 14, 2008, the cover letter that accompanied the documents was signed by the entity's president *after* the effective date of the Power of Attorney. The president also personally delivered the cover letter and documents. These actions, as with the previous bid submittal for proposal number X733767, show that the president has assisted and represented the entity, and *continues* to do so, contrary to the terms of the Power of Attorney, specifically paragraph 2, which authorizes the father to "negotiate, make, execute and deliver any and all contracts, correspondence, bids, invoices, receipts, releases or other document of any nature that are related to the bidding of Proposal Number X733767 with Anne Arundel County, Maryland . . ." The president's ongoing participation, first with the county and now with the Ethics Commission, belies the efficacy of that Power of Attorney.

Of equal significance is the fact that these firefighters, on behalf of the entity, previously entered into several contracts with the county, quite possibly violating the ethics law in every instance. There is no indication in any of these previous contract documents that the firefighters ever even disclosed their employment relationship with the county.

The unavoidable fact remains that the firefighters are the owners and principals of the entity that seeks to contract with the county. They signed the proposal and the president continues to advocate for the award of this contract to the entity. Even if the father takes an active role in the management of this contract, the two principals cannot divest themselves from the ongoing management of the entity. They will continue to be responsible for hiring, firing, and disciplining employees, managing the entity's payroll, tax withholding, bookkeeping and other managerial functions. They will also be involved in maintaining the assets of the entity, including equipment and other assets. These activities will inevitably overlap with the management of the contract with the county. If the contract is awarded and a dispute arises, they will most assuredly have an interest in the outcome of that dispute, more so if the dispute results in litigation. As owners, they have the most to gain and the most to lose if any contract results in losses or liability to the entity.

The execution of the Power of Attorney to the father is certainly an attempt to circumvent the prohibition on assisting or representing an entity in a matter in which the County has an interest. It may technically accomplish that goal, but at the very least, the ongoing interests and actions of the principals of the entity create a very real appearance of a significant conflict of interest.

Section 7-1-102 of the ethics law provides:

§ 7-1-102. Legislative findings; policy; liberal construction.

(a) **Findings.**

(1) The County Council, recognizing that our system of representative government is dependent upon the people maintaining the highest trust in County officials and employees, finds and declares that the people have a right to be assured that the impartiality and independent judgment of County officials and employees will be maintained.

(2) It is evident that this confidence and trust is eroded when the conduct of the County's business is subject to improper influence or *even the appearance of improper influence*.

(b) **Policy.** For the purpose of guarding against improper influence, the County Council enacts this public ethics law to require certain County officials and employees to disclose their financial affairs and to set minimum ethical standards for the conduct of County business.

(c) **Liberal construction.** The County Council intends that this article, except its provisions for criminal sanctions, be liberally construed to accomplish its purpose. (Emphasis added.)

The purpose of the ethics law is to guard against improper influence and the appearance of improper influence. The Ethics Commission is charged with administering the law and providing advice that will assist employees in accomplishing this purpose. In this case, the Ethics Commission would be remiss if it advised that the Power of Attorney executed by these firefighters adequately eliminates the apparent conflict of interest that will exist if their entity is awarded the contract. Although the Power of Attorney purports to eliminate the ethical impropriety that would accompany the award of this contract to the firefighters' entity, it does not effectively do so. It is merely an attempt to circumvent the technical letter of the law while continuing to violate the spirit of the law. For this reason, the Ethics Commission advises against awarding this contract to the firefighters' entity.

The Anne Arundel County Ethics Commission

/s/

By: _____
Betsy K. Dawson, Executive Director