



**ANNE ARUNDEL COUNTY
ETHICS COMMISSION**

August 18, 2008

By Electronic Mail Only

Re: AO-08-49

You inquired whether you may contract to sell fire equipment parts to a volunteer fire company. You are a career firefighter, stationed at this particular volunteer company's station. In fact, as a captain, you are the station chief, which means that during your shift, you have operational control of the station, including all career firefighters. Since this particular station is a combination fire station, it is staffed by both career and volunteer firefighters. During your shift therefore, and in the absence of a volunteer chief, there will be times when you are in charge of both career and volunteer firefighters.

You are also engaged in secondary employment on the eastern shore as a distributor of fire fighting equipment. You indicated that the volunteer company where you work solicited the bid from you. The ethics commission advises that you may not contract with the volunteer company to provide equipment.

There are a number of ethics issues raised by your inquiry. First, §7-5-102(a) provides, in pertinent part, that an employee may not:

- (1) be employed by, have a contract with, or have a financial interest in:
 - (i) a person subject to the authority of the employee or of the employee's governmental unit;
 - (ii) a person who is negotiating or has entered into a contract with the County that is administered by the employee's governmental unit. . . .

This provision is applicable to your situation because there is a contract between the volunteer company and the county that is administered by the fire department, and because, through this contract, the volunteer company is subject to your authority and the authority of the fire department. Specifically, the reciprocity agreement between the volunteer company and the county, which is renewed annually, states at paragraph 3, that:

The Company is under the control of the County Fire Chief relevant to operational matters. Operational matters include fire suppression, rescue and emergency medical services activities, use and maintenance of

apparatus . . . operational assignment of career personnel, and health and safety issues.

In paragraph 7, the contract further states:

The Company shall allow the County's Fire Chief or the Chief's designees to inspect the Company's property and equipment, the Facility, and the County's property and equipment utilized by the Company at times and in a manner prescribed by the County Fire Chief.

The reciprocity agreement makes it clear that as station chief, you could be in operational control of the volunteer company under certain circumstances, and that in some circumstances you could be designated by the fire chief to inspect the company's equipment, as well as county-owned equipment. You could thus be in a position to inspect equipment that you have sold to the company.

Because of this agreement, and because of the operational control that the county fire department has over the volunteer company, §7-5-102(a) prohibits you from contracting with the company to sell equipment. It is not relevant that the purchase of equipment is a corporate decision of a private entity, or that the purchase price comes from moneys raised by the volunteer company through its fundraising activities.

Section 7-5-103 also applies to prevent you from contracting to sell equipment to the volunteer company. That provision prohibits an employee from being an:

independent contractor of an entity that is a party to a contract that binds or purports to bind the County if:

- (1) the duties of the employee include matters substantially relating to or affecting the subject matter of the contract; and
- (2) the contract binds or purports to bind the County to pay more than \$1,000.

The reciprocity agreement between the county and the volunteer company does bind the county to "disburse legally adopted appropriations" to the company, which are generally in excess of \$1000. As the station chief, your duties clearly include "matters substantially relating to or affecting the subject matter of the contract."

Finally, §7-5-107 prohibits an employee from intentionally using the prestige of the employee's office or position for personal gain. The fact that you are the station chief would certainly appear to raise prestige issues. Upon offering you a contract to sell equipment, the volunteer company may well be assured of your

continued high regard and favored treatment, when the appropriate occasion presents itself.

For these reasons, it appears inevitable that there will be a conflict between your duties to the fire department and your relationship to the volunteer company if you contract with the company to provide goods or services. Therefore, pursuant to §7-5-102, 7-5-103, and 7-5-107, the ethics commission advises that you may not enter into a contract with the volunteer company. As to any contract that you have already completed, you may be subject to enforcement action under the ethics law.

The Anne Arundel County Ethics Commission

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By: _____
Betsy K. Dawson, Executive Director