



**ANNE ARUNDEL COUNTY
ETHICS COMMISSION**

November 3, 2008

By Electronic Mail Only

RE: AO-08-75

You inquired whether a member of the county Local Management Board may accept an offer from a contractor with the LMB to work with the contractor on a separate contract in another county. The contractor, who is working as a facilitator in developing the LMB's scheduled retreat, originally met the LMB while working on a previous contract with the LMB. The contractor proposes to contract with an LMB in a different county to conduct a needs assessment, and would like to hire the member as a subcontractor for that proposal. That contract would not involve Anne Arundel County in any way, as Local Management Boards work independently of each other and exclusively within their own counties.¹

For the reasons stated below, the ethics commission advises that the member may not be employed by, or have a contract with the facilitator, at least for the duration of the facilitator's contract with the LMB.

There are two provisions of the ethics law that affect this inquiry. Section §7-5-102(a) provides that an employee² "may not be employed by, or have a contract with" any entity that "has entered into a contract with the County that is administered by the employee's governmental unit." While the contract is between the LMB and the contractor and does not involve the county *per se*, the result is the same- the LMB administers the contract.³ This prohibition directly addresses the situation about which you inquired. Even if the ethics commission would permit this employment by way of exception, as permitted by §7-5-102(b)(i), there is another provision of the ethics law that also prohibits this type of employment/contractual relationship.

Section 7-5-103 prohibits employment by, or a contractual relationship with, any entity that is a party to a contract with the county where the duties of the employee "include matters substantially relating to or affecting the matter of the contract; and the contract binds . . . the county to pay more than \$1,000." The member of the LMB will

¹ The LMB was created to "provide leadership that creates opportunities for all children and their families in Anne Arundel County to achieve their full potential." For additional information on the LMB, visit their website at: <http://www.aacounty.org/LMB/index.cfm>.

² Section §7-1-101(5) provides that members of county boards such as the LMB are considered to be county employees, subject to the ethics law.

³ According to the Anne Arundel County Charter, §3-6-111, the LMB "is a public agency and an instrumentality of County government."

certainly be participating in retreat activities conducted by the facilitator. The member's duties clearly and substantially relate to the facilitator's contract with the LMB.

Although the ethics law prohibits the member from working for the facilitator during the life of the facilitator's contract with the county, it does not address, and therefore does not prohibit, an employment or contractual relationship after the contract has been fully completed. However, to avoid even an appearance of impropriety, the facilitator should avoid approaching the member about the employment opportunity until such time as the contract has expired. And, if the member does eventually work for the facilitator, that work relationship must cease immediately if the facilitator enters into any negotiations with the LMB for future contracts.

In reaching its decision, the commission also considered the applicability of the prestige of office or position provision, §7-5-107(a). That provision prohibits an employee from using the employee's position as the basis for other secondary employment opportunities. However, in IO-97-112, the commission advised that an employee could accept secondary employment where the primary reason for the offer was because of the pre-existing expertise and experience of the employee and not because of county employment. That conclusion is equally applicable here, where the LMB member was appointed to the board because of the member's extensive experience in health care services. For this reason, the prestige of office issue is not applicable to your inquiry.

Thank you for your inquiry. Please contact the office if you have additional questions.

The Anne Arundel County Ethics Commission

/s/

By: _____
Betsy K. Dawson, Executive Director