



**ANNE ARUNDEL COUNTY
ETHICS COMMISSION**

March 31, 2009

By Electronic Mail Only

Re: AO-09-18

You inquired whether it is permissible for the employees in the department of detention facilities to work for a vendor on matters relating to a contract that the vendor has with the department. Specifically, the department contracts with a commissary vendor to provide items for sale to the inmates at the detention facilities. You explained that it is customary practice at most detention facilities for the vendor to hire detention facility staff to deliver the goods to the inmates. You indicated that permitting staff to deliver the vendor's goods "provides reasonable assurance that the employees employed know and will most likely abide by policies, procedures and standards of the Detention Facility, which contributes to maintaining safety and security." In addition to providing delivery services, one detention facility employee also acts as the on-site supervisor for the vendor, completing credits and setting up the delivery schedule.

The ethics commission advises that this practice violates the Public Ethics Law, §§7-5-102(a) and 7-5-104(a), and §7-5-107.¹ Furthermore, in view of the fact that the ethics commission finds that this practice creates a real and significant conflict of interest, it cannot grant an exception that would permit detention facility staff to work as agents, employees, or independent contractors for a commissary vendor.

Section 7-5-102(a) prohibits a county employee from being employed by or contracting with any person who is subject to the authority of the employee's agency or who is negotiating or has entered into a contract that is administered by the employee's agency. This prohibition applies directly to the situation you have described. See, [AO-08-49](#), [AO-07-60](#)(revised), [IO-04-103](#).

Section 7-5-104(a) prohibits a county employee from assisting or representing a person (or entity) in any matter in which the county has an interest, except in the course of the employee's official duties. As an employee or agent of the commissary vendor, the detention facility employee would be assisting an entity in a matter in which the county, as a party to the contract, most certainly has a legal interest. See, [AO-08-85](#), [AO-08-07](#).

¹ If this contract would bind the county to pay more than \$1,000, the activity would also violate §7-5-103, which prohibits an employee from working for any contractor with the county if the employee's duties would "include matters substantially relating to or affecting the subject matter of the contract." In this case, the county will not be paying anything to the contractor; on the contrary, the contractor is required to contribute 10% of its revenue under the contract to the Inmate Benefit Fund.

Section 7-5-107(a) prohibits a county employee from using the prestige of the employee's position for private gain. To accept employment by an outside employer that is offered solely because of the employee's county job violates this provision. See, [IO-00-132](#), [IO-97-39](#).

Secondary employment with a county vendor, particularly one whose contract is with the employee's own agency, creates an actual conflict of interest, not merely a legal or technical conflict. For example, any contractual disputes between the vendor and the county or the detention center would leave the employees of the dueling parties in the middle of the controversy. The employees might not be able to act with impartial and independent judgment where their financial interests may be affected.

Another example of a conflict of interest would exist if competitors for this contract believe, not unreasonably, that the current vendor, who employs detention center personnel, has an inside track and a preferred status in the proposal evaluations. Employment of county personnel in this contract would certainly appear to be a factor in its favor to be considered by the evaluation committee.² Other vendors may well believe that they would have to hire county employees in order to be considered a viable contender for the contract.

A conflict could also occur if an inmate had a dispute with the vendor or with the vendor's delivery personnel- in this case, a detention facilities staff member. If a detention center employee were injured or involved in an altercation while delivering a commissary item, there may be workers' compensation issues, or liability issues. A conflict of interest could also arise if discrepancies appear in the accounting process at any point during the process of ordering, paying for, and receiving the commissary items. The RFP, Attachment A, §1.2.5 states: "Automated processes involved with commissary orders, deliveries, and postings shall require extensive interface between the successful Offeror and DDF." Where the Offeror's employees are also employees of DFF, that "interface" is likely to be less than wholly impartial.

The detention facility stated that "the distribution process is much better because staff familiar with the department are more reliable and do not fear the inmates confined in the facilities. Rather, they understand the need for dependable delivery and accountability." The ethics commission suggests that a vendor, whose clientele includes a large number of detention facilities, should be able to hire reliable, dependable, accountable and competent employees that can fulfill the contract requirements. If that is not the case, the detention center may choose to require that delivery of commissary items be handled by its own on-duty staff.

² The vendor acknowledged that all but one of its employees at the detention facilities is also a detention facilities employee. The other employee works for the state, in the probation department. The vendor has contracts with over 700 facilities and hires facility staff whenever it is authorized. This hiring practice is smart business in that it promotes good relationships between the contractor and potential customer pool.

For these reasons, the ethics commission advises that detention facilities employees may not have a contract with, or be employed by the commissary vendor who contracts with their department. Thank you for your inquiry. Please call if you have any questions.

The Anne Arundel County Ethics Commission