



ANNE ARUNDEL COUNTY
ETHICS COMMISSION

December 31, 2009

By Electronic Mail Only

Re: AO-09-72

You inquired whether a division chief in the fire department may engage in secondary employment as a paid consultant with ICMA. The type of consulting would include “E.M.S. programs, management, fee for service, and similar issues for position papers and/or system recommendations.” As the division chief explained it, as a consultant, “[if] cities or counties requested an EMS study[the division chief] would be the individual or member of a team to research the operation and compare it to national trends or similar jurisdictions, conduct site visit(s), and write a report with recommendations.”

The division chief in question manages the health and safety division of the fire department. In a previous position, the division chief assisted in the department’s development of EMS programs, and the fee for service program, but is no longer involved in those matters. The division chief currently does participate in management development but is not the ultimate decision maker for fire department policies.

The International City/County Management Association (“[ICMA](#)”), is a non-profit membership organization that is open to anybody “interested in local government,” although voting rights are limited to full members- those who are primarily of administrative professionals or other management level employees of local governments. Your inquiry is unusual in that many, if not most, professional membership organizations rely upon the pro bono services of their members to enhance the educational offerings available to other members. In so doing, these members are acting with the support and under the direction of their government agencies. ICMA however, while non-profit, is engaged in business development, sales of products and services, and many other activities. The ICMA website describes the organization’s functions to include:

[providing] technical and management assistance, training, and information resources in the areas of performance measurement, ethics education and training, community and economic development, environmental management, technology, and other topics to its members and the broader local government community.

Among its many [member services](#), ICMA provides a number of publications on issues of importance to local governments, including [public safety matters](#). These publications, like its other services, are available to the public at a price.

In addition to the financial support provided to ICMA by membership dues and the sale of its publications and consulting services, the organization relies upon corporate “partners.” These partners include:

Fortune 500 companies, small businesses, and other organizations that offer products and services to local governments. They represent many industries, including consulting, technology, energy and environment, transportation, finance, insurance and risk management, and law. Click here for a list of current [Strategic Partners](#).

ICMA also provides [consultants](#) to assist local governments in problem-solving, including the area of public safety. The staff consultants are almost without exception, *former* government employees and indeed, most of the staff members at ICMA are not currently affiliated with government.

You indicated that your department has no contractual, regulatory or membership affiliation with ICMA.¹ Presumably your department therefore does not subscribe to ICMA’s publications or receive any other membership benefits. Participation in ICMA seminars, conferences, or other events confers no responsibilities upon the participants and ICMA has no regulatory authority.

In the absence of contractual or regulatory relationships, the secondary employment provisions of the ethics law would prohibit this secondary employment only if the employment “would impair the impartiality or independent judgment of the employee.” §7-5-102(a)(2).

The State Ethics Commission has developed useful criteria in considering the impairment issue and also in determining whether the secondary employment would constitute an abuse of the prestige of office according to §7-5-107(a). These criteria include:

- whether the secondary employment would have an impact in the county;
- whether the secondary employment would involve the same kind of work in both private and official activities or grows out of official training or related activities; and
- whether the secondary employment will involve interactions with the same persons generally in the context of public and private activities. See State Ethics Commission Advisory Opinion 95-7.

In this case, the employee will participate in establishing ICMA policies that will impact ICMA members, including presumably, agencies of local governments. If the employee has been involved in the development of departmental policies concerning E.M.S. programs, management, fee for service and similar issues, the employee’s work with ICMA may be directly related to the employee’s official duties. It is also probable that the employee’s qualifications to work with ICMA were developed to a large extent

¹ ICMA is listed as an eligible vendor in county records but there is no record of any current or recent business between the county and that organization. Individual employee memberships would not necessarily appear in these records.

as an employee of the county. The fact is that the employee will be using expertise developed at least in part, as an employee with the county. And the employee may be called upon to work as a private consultant with the same groups of fire department officials with whom the employee previously worked on behalf of the county. These factors are at least suggestive that this secondary employment may result in a conflict of interest; however, these concerns may be mitigated by avoiding work with, or for, any Maryland or other jurisdictions with which the county fire department has had interactions in the development or management of policies or programs.

Section §7-5-104(a), prohibits an employee from representing any person, other than the county, before any county employee, or as to any matter in which the county has an interest. The ethics commission has interpreted this provision to refer to matters where the county's interests could be competitive or adversarial with the secondary employer's interests.² The county clearly has an interest in the policies that it has developed and in the policies developed jointly with other Maryland jurisdictions. Consequently this provision would prohibit the fire division chief from assisting a private employer from developing policies or programs that could be contrary to the stated policies of the county fire department or the departments of other Maryland jurisdictions.

The third provision that is relevant to this inquiry is Section 7-5-104(a) of the ethics law, which provides that an employee may not use the prestige of the employee's position for the private benefit of another. This provision would for example, prohibit the division chief from using the county title or any other that could identify the employee as a county firefighter, in connection with the secondary position. See, e.g., [AO-08-88](#), [IO-98-22](#). While the employee may permit the use of educational certifications and degrees received, the use of the title in any ICMA publications or advertising would imply the county's endorsement or support of the employee's activities and of the organization.

If the employee is able to engage in this secondary employment within the guidelines set forth in this opinion, the ethics commission advises that the employee may accept this position. The employee's supervisor should monitor the secondary employment to ensure compliance with these ethics law provisions.

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

The Anne Arundel County Ethics Commission

/s/

By: _____
Betsy K. Dawson, Executive Director

² See, e.g., AO-08-07, AO-02-73, AO-01-58, AO-98-119.