



July 20, 2015

[REDACTED]

re: Advisory Opinion 15-01

Dear [REDACTED]:

You have asked whether your participation, as an employee of St. Mary's County, on a committee that considers recommendations for referral of clients to a potential provider with which you have a professional services contract is permissible under the St. Mary's County Public Ethics Ordinance.

§ 158-5 of the St. Mary's County Public Ethics Ordinance provides:

(a) *Participation prohibitions.*

(1) Except as permitted by Commission regulation or opinion, an official or employee may not participate in:

...

(ii) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:

...

(B) A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner, or employee;

...

(b) *Employment and financial interest restrictions.*

(1) Except as permitted by regulation of the Commission when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:

(i) Be employed by or have a financial interest in any entity:

...

(B) That is negotiating or has entered a contract with the agency, board, or commission with which the official or employee is affiliated; or

(ii) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee.

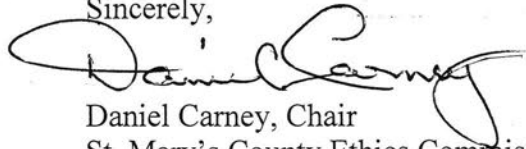
(2) The prohibitions of paragraph (1) of this subsection do not apply to:

- ...
- (iv) Employment or financial interests allowed by regulation of the Commission if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.

The Commission finds that your participation would be a violation of § 158(a)(1)(ii)(B). The Commission further finds that your simultaneous employment by St. Mary's County and the provider, if and when that provider enters into a contract with your agency, would be prohibited by § 158(b)(1)(i)(B). Your participation and dual employment represent a potential conflict of interest, and may also be prohibited by §158(b)(2)(iv).

However, §158(a) provides for participation, and §158(b) provides for employment, otherwise prohibited when permitted by regulation or opinion of the Commission.¹ The Commission is of the opinion that your participation and dual employment would be permissible so long as you recuse yourself, both in form and substance, from committee proceedings, and refrain from communication with other committee members, regarding recommendations for referrals and the referral process.

Sincerely,



Daniel Carney, Chair
St. Mary's County Ethics Commission

¹ Although §158(a) refers to "regulation or opinion," while §158(b) refers only to "regulation," the Commission believes that the statutory intent is to permit prohibited employment by opinion as well as regulation.