

## ADVISORY OPINION 08-01

[REDACTED PUBLIC VERSION]

June 24, 2008

AAA, has asked the Ethics Commission for an advisory opinion regarding the propriety of certain outside employment arrangements of two City employees under Chapter 38, Ethics, of the College Park Code.

I. BBB

a. Facts.

BBB is a [non supervisory employee in the] Public Services Department. [ ]. BBB lives in an apartment located in College Park owned by CCC, a landlord that owns several properties in the City.<sup>1</sup> BBB [ ] owns DDD, a [ ] company that provides [ ] services for CCC's properties. According to a report by BBB's supervisor, CCC indicated that BBB "may be used to [monitor] these properties." BBB does not [perform her duties as a City employee] on CCC's properties. BBB has not requested that the Commission exempt her business relationships with CCC from the provisions of the Ethics Chapter.

b. Discussion.

Based on the facts provided, BBB appears to have two business relationships with CCC: BBB's employment of DDD and CCC's employment of BBB to monitor the property where BBB lives. For purposes of the Ethics Chapter, both relationships render BBB an employee of CCC.<sup>2</sup>

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<sup>1</sup> CCC has an ownership interest in several business entities that own rental properties in the City. For the sake of brevity and clarity, this Opinion and Order will refer to CCC as the owner of the properties.

<sup>2</sup> Under Maryland law, the issue of whether a person is an employee most often arises in tort actions where the plaintiff seeks to hold a principal liable for the acts of its agent and where an agent is injured while performing work for his or her principal. Under the test used to determine whether a person is an employee for those purposes, CCC's employment of DDD appears to create a principal-independent contractor relationship, not an employment relationship. However, the State Ethics Code defines "employer" as "an entity that pays or agrees to pay compensation to another entity for services rendered." In Carroll County Ethics Com'n v. Lennon, the Court of Special Appeals, interpreting a Carroll County ethics statute similar to the College Park Ethics Chapter, noted that the statute was modeled after the State Ethics Code and looked to the State Code for guidance. 119 Md. App. 49, 65-66 703 A.2d 1338, 1346 (1998) In that case, an attorney was deemed to be an employee of his client for purposes of the Carroll County ethics law.

BBB's employment by CCC constitutes a technical violation of section 38-11.C of the Ethics Chapter. That section provides as follows:

No City official or employee shall be employed by a business entity that is negotiating a contract of more than \$1,000 with the City or has contracts totaling more than \$1,000 or more [sic] in any twelve-month period or is regulated by any City body, except where such employment was disclosed to and exempted by the Commission pursuant to § 38-10 of this chapter.

BBB is employed by CCC, and CCC, as the owner of rental property in the City, is regulated by the Department of Public Services. Therefore, BBB's employment by CCC is prohibited unless this Commission grants her an exemption.

The Commission recommends that BBB immediately request an exemption pursuant to section 38-10. The request must be in writing and under oath and should confirm or correct the facts discussed above.

II. EEE

a. Facts.

EEE is employed [in a non supervisory position in the] Public Services department. [EEE, in her position with the City,] performs administrative tasks and does not exercise discretion regarding the [Department]'s enforcement activities. EEE serves as a resident "authorized person" for FFF, [a business entity].<sup>3</sup> ("FFF"). EEE states that she attends one meeting per year in connection with her role as authorized person and that she has no involvement with the day-to-day operation of [FFF]. She receives compensation of \$1,500.00 per year from FFF. EEE has not requested that the Commission exempt her employment with FFF from the provisions of the Ethics Chapter.

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<sup>3</sup> When [a business entity] seeks an alcoholic beverage license, three persons authorized to act as agents of the [business entity] must complete the application, and the license is issued to the authorized persons for the benefit of the [business entity]. At least one of the authorized persons must be a registered voter and taxpayer of the city where the business is located when the application is filed.

b. Discussion.

The Commission finds EEE to be an employee of FFF for purposes of the Ethics Chapter because she receives compensation for services she provides to FFF.<sup>4</sup>

EEE's employment by FFF constitutes a technical violation of section 38-11.C of the Ethics Chapter. That section provides as follows:

No City official or employee shall be employed by a business entity that is negotiating a contract of more than \$1,000 with the City or has contracts totaling more than \$1,000 or more [sic] in any twelve-month period or is regulated by any City body, except where such employment was disclosed to and exempted by the Commission pursuant to § 38-10 of this chapter.

FFF, as the owner of a business located in the City, is regulated by the Department of Public Services. Therefore, EEE's employment by FFF is prohibited unless this Commission grants her an exemption.

The Commission recommends that EEE immediately request an exemption pursuant to section 38-10. The request must be in writing and under oath and should confirm or correct the facts discussed above.

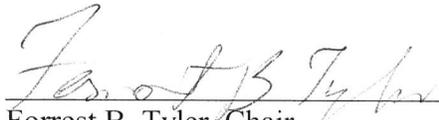
III. Conclusion.

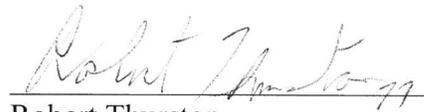
The Ethics Chapter broadly prohibits City employees from being employed by businesses that are regulated by a City body unless the employee requests an exemption. Therefore, because neither employee has applied for an exemption, both employees technically are in violation of the Ethics Chapter. The Commission is not inclined to initiate a complaint regarding the employees, provided that the employees apply for an exemption from section 38-11.B within fifteen days of the date that AAA provides notice of the requirements of this order to the employees. We request that AAA advise the Commission of the date that the notice is provided to each employee.

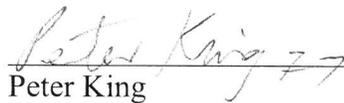
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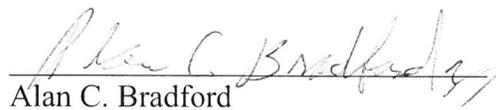
<sup>4</sup> See *supra* note 1 discussing the broad meaning of employment for purposes of the Ethics Chapter.

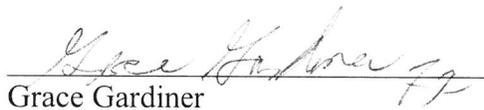
The Commission recommends that the City's Outside Employment Form be amended to include notice to employees that they must request an exemption from the Ethics Chapter prior to accepting employment with a business entity that is regulated by the City, or that has or is negotiating a contract of \$1,000.00 or more with the City. The Commission further recommends that the City remind employees of the requirement that they file Outside Employment Forms and requests for exemptions from the Ethics Chapter, if applicable, prior to commencing outside employment.

  
Forrest B. Tyler, Chair

  
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