

November 22, 2013

Assistant Attorney General Dan Friedman:

On behalf of the Frederick County Delegation, I am requesting your interpretation on a key issue within the newly approved Charter document for Frederick County:

Article 4, Section 405, Qualifications of the County Executive, Subsection B reads:

*“(b) The Executive shall devote full-time to the duties of the office. The Executive may not participate in **any private occupation for compensation**. During the term of office, the Executive may not hold any other office of profit.”*(emphasis added).

Question: what is “**ANY** private occupation for compensation”?

I am requesting an Attorney General’s opinion (or guidance) regarding whether an individual is eligible to serve as a County Executive who may also earn income from other sources. Specifically, I am asking for clarification on whether an individual qualifies to serve as County Executive who:

- owns an interest in one or more businesses?
- Operates one or more businesses?
- Earns non-W-2 income from a business entity which may include:
 - 1099 Income (contractor income), the source of which can be:
 - § contract work
 - § sales commissions (real estate, insurance, securities, etc.)
 - § dividends on stocks (when personally managing/directing their account)
 - § interest earnings (bank accounts, mortgage, notes, etc., again, when personally managing or directing their accounts)
 - Partnership income
 - § K-1 income
 - § Business partnership
 - Pass through income
 - § Subchapter “S” Corporation
 - § LLC or LLP

In all of the above instances, a business owner, or part-time person or contractor, may devote little to no time; or, more than 100 hours per week to their entity(ies). In some circumstances, the business may be seasonal leading to very erratic hours.

Since the Executive shall devote “full time” to the position, so presumably this would preclude so called W-2 Income, since a statutory employee-employer relationship exists therein. However, note that State Legislators & County Commissioners, while serving in a part time capacity, receive a W-2 for tax reporting purposes. And, I recognize the last sentence precludes the individual serving in another elected office.

This is a link to today’s newspaper article regarding this subject (http://www.fredericknewspost.com/news/politics_and_government/article_2eefe810-35ee-550d-acea-03ba283261f4.html).

Thank you,

Senator David R. Brinkley
Senate Minority Leader
4th Legislative District -
Frederick and Carroll Counties
Chair, Frederick County Delegation

District Office:

[301-882-7093](tel:301-882-7093)

PO Box 321

New Market, MD 21774

Annapolis:

420 James Senate Office Building

Annapolis, MD 21401

DC Metro: [301-858-3704](tel:301-858-3704)

Baltimore: [410-841-3704](tel:410-841-3704)

Toll Free: [1-800-492-7122](tel:1-800-492-7122) ext. 3704

David.Brinkley@senate.state.md.us