

Anne Arundel County Ethics Commission

Advisory Opinion - 97- 132

Issue:

Whether county employees may tour the manufacturing plant of a potential vendor, at the invitation and expense of the vendor, in order to help these employees determine the appropriate specifications for the purchase of new equipment, which shall be purchased through the normal bidding process.

Background:

The Anne Arundel County Fire Department is preparing to purchase new fire apparatus. Since the cost of fire trucks can exceed \$500,000.00, the fire department must prepare the specifications for this equipment carefully and after consideration of the available technology. One item under consideration by the department is the type of paint that will be used on the apparatus, since in past years, there have been recurring problems with the durability of the paint. The department has been looking into different processes for the finish of the trucks and has consulted with a potential vendor about a certain type of process that may solve the problem. County officials are not convinced that the process described by the vendor will work, but they would like to learn more about it. The vendor has invited employees of three Maryland jurisdictions, including Anne Arundel County, to visit its manufacturing plant in Wisconsin, to observe and learn about this finishing process. The vendor would pay for transportation and all other expenses of the employees who make the trip. The employees being considered for the trip would include members of the fire department responsible for the maintenance of fire equipment and the fleet administrator for the county.

After the visit, the fire department will develop specifications for the apparatus it needs to purchase and at that point, the purchases will proceed through the normal bidding process. There are as many as five or six major vendors throughout the country that may be able to submit bids for this equipment.

Discussion:

The Public Ethics Law, §3-106, prohibits employees from receiving gifts from certain types of donors. These donors, called "controlled donors", include:

1. persons doing or seeking to do business with the county;
2. persons engaged in activities that are regulated or controlled by the county;
3. persons who have financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of any official duty of the employee; or
4. lobbyists.

The potential vendor to the fire department would be a "controlled donor" for two reasons. First, the manufacturer is seeking to do business with the county. Second, the financial interests of the manufacturer may be affected by the development of specifications and the opportunity to bid for the sale of the fire apparatus.

A "gift" is defined, in §1-101(l)(1), as ". . . something of value that is given, regardless of the form, without adequate and lawful consideration." Payment by the manufacturer, for transportation, lodging, meals and incidental expenses of a trip would clearly constitute a gift. Therefore, this gift from a "controlled donor" would be impermissible under §3-106 of the ethics law, unless it could fall into one of the exceptions to the prohibition, found in §3-106(c).

That section provides that unless a gift would tend to impair the judgment of the recipient, give the appearance of doing so because of its value or frequency, or cause the recipient employee to believe that it is designed to improperly influence the employee, the following gifts may be accepted from controlled donors:

1. occasional meals and beverages of modest value;
2. ceremonial gifts or awards of insignificant value;
3. gifts of nominal value;
4. reasonable expenses for food, travel, lodging and scheduled entertainment of the employee if the the expenses are paid *in return for the employee's participation in a panel or speaking engagement; or for writing an article.*
5. gifts of tickets extended to elected officials or their representatives if the purpose of the gift is to take part in a ceremony involving the office;
6. a gift which the ethics commission exempts because it finds that the gift would not be detrimental to the impartial conduct of county business *and* the gift is purely personal and private in nature;
7. gifts from family members or members of the household of the employee; or
8. honoraria, under certain limited conditions. (*emphases added.*)

In the present case, the gifts of lodging and airfare would not fall within the exemption of §3-106(c)(4), because they are not offered in return for the employees' participation in a speaking engagement, or for writing an article. The gifts would not be purely personal and private in nature, so they could not be exempted by the ethics commission. The fact is that gifts of this nature and magnitude, because of their value, would create an appearance of impairing the impartiality and independence of judgment of the county employees who receive them. The argument could reasonably be made that a county employees who visits a potential vendor at the latter's expense would have a harder time rejecting products or services offered by that potential vendor. Moreover, the recipient county employees would have every reason to believe that the trip to the vendor's plant is designed to positively influence the decision of the employees, thereby impairing their impartial and independent judgment.

The State Ethics Commission has also found this type of gift to be prohibited. In Opinion

81-46, the Commission ruled that ". . . such trips could affect an employee's personal attitude toward a contractor or a potential contractor, thus breaking down the arms length bargaining relationship that should exist between the State and entities with which it does business." Volume 19A, COMAR.

Conclusion:

The ethics commission concludes that acceptance by county employees of travel and lodging expenses from a potential vendor to visit the vendor's manufacturing plant would violate §3-106 of the Public Ethics Laws. This conclusion does not mean that county employees may not or should not visit the manufacturing plant. Such a visit may be absolutely necessary. Whether it would be permitted by county purchasing or procurement rules should be considered, but that is a matter over which the ethics commission has no jurisdiction. The commission would only advise that such a trip, being legitimate county business, should be paid for by the county rather than by the potential vendor. If the employees' trip is paid for by the county, it would be acceptable under the provisions of §3-106(c)(1) for the employees to accept meals and beverages *of modest value* from the potential vendor, since the value and one-time only nature of this gift would have little tendency to impair the judgment or impartiality of the county employees.

June 24 , 1997

By: Anne Arundel County Ethics Commission

Norman G. Myers, Sr.,
Acting Chairperson