

Anne Arundel County Ethics Commission

Advisory Opinion 97-162

Issues:

1. Whether fire department equipment can be used and personnel can participate in functions sponsored by private entities.
2. Whether the fire department can accept gifts of money or public safety items for distribution to the public given by private entities in exchange for the fire department's participation in privately sponsored special events.

Background:

The volunteer firefighters purchased a trailer, used as a "safety house", to teach fire safety to members of the public. The trailer is owned by the volunteers and maintained by the County. It is staffed by both volunteer and career firefighters. On many occasions, private entities have approached the fire department with requests to have the department bring the trailer to an event, such as a grand opening, sponsored by the entity. The department brings the trailers and teaches fire safety to members of the public who attend the event. Businesses are aware that the presence of the department and its trailers (as well as fire trucks and other equipment) can be a big draw and will help boost attendance at their event. On many occasions, the businesses will respond by offering money or gifts to the department or the volunteers for use by the department in its public safety education.

Discussion:

The ethics law does not deal with the issues of private use of county owned equipment. Those issues may be subject to other portions of the County Code. The ethics law regulates the conduct of county employees. Section 3-104 of the Anne Arundel County Public Ethics Law prohibits county employees from using the prestige, title, or authority of the employees' office or position for private gain or for the gain of others. If the equipment can only be operated under the authority of fire department employees, and if the ethics law prohibits the employees from participating in the activity because of prestige or conflict issues, then as a practical matter, the equipment cannot be used in the activity.

One of the essential functions of the fire department is to protect county citizen from fire. One of the best ways to protect the citizens is by educating them in fire safety. The fire department clearly believes that the use of its apparatus and other equipment is useful and necessary to fulfill its educational goals. It is in the county's best interest to achieve the highest level of fire safety awareness that is possible and this interest outweighs the "gain" in attendance

or publicity for an event that may accrue to the private entity sponsoring the event.¹ As long as the fire department's decisions to use its employees and equipment at privately sponsored events are made impartially and without favoritism, its participation will be permissible. The department should establish criteria for making an impartial determination about which events to attend. One way to ensure impartiality is by participating in private events on a "first come, first served" basis, rather than by choosing among competing businesses for a given date. There are undoubtedly other impartial criteria for selection available to the fire department as well.

The issue of accepting gifts is governed by §3-106, which both prohibits solicitation of gifts and limits the acceptance of gifts from controlled donors. Exceptions to the solicitation prohibition have been permitted where the gifts would benefit the public as opposed to the employees, the gifts are part of an established agency program, and the program is officially endorsed by the County administration. In cases where solicitation has been permitted, it must be carefully controlled to ensure that donors are not identifiable by the agency and that departmental decisions are not made in response to the receipt of donations. See, AO-97-122, AO-97-41.

In the instant situation, there is no specific agency initiated program. Instead, the fire department is simply responding to individual requests to participate in privately sponsored programs. The donors would be clearly identifiable to the department and there would be a possibility of favors expected as a result of responding to a departmental solicitation. Therefore, the fire department may not solicit gifts from any sponsor who seeks participation of the department in its special event.

Unsolicited gifts of money or safety related items, whatever their source, would be received by the department on behalf of the public, to benefit the public as opposed to the employees of the department. The fire department would act merely as a conduit for these gifts, and not as the ultimate recipient. The ethics law does not prohibit the receipt of gifts to the public, even if the fire department acts as an intermediary between the donor and the recipients.

However, the department must keep accurate records of the type and value of gifts received, the name of the donor and the name of the ultimate recipient of the gift. Gifts of money must be accounted for and the money must be spent for items that promote the public safety purposes of the department. In this way, the department will be able to demonstrate that the gifts are not received for the benefit of its employees; that the gifts are not the *quid pro quo* for the department's participation in a privately sponsored public event.

Conclusion:

The fire department may participate in privately sponsored events that are open and free to the public, in order to fulfill its public safety goals. The department must determine a method

¹ The department should not participate in an event where the sponsor charges admission to members of the public to attend either the event itself or the fire department's display. Where the business receives a financial gain, the participation of fire department employees would constitute the use of the prestige, title and authority of the office for another's financial gain.

to ensure that its decision to participate in these events is made impartially. Although the department may receive gifts from the private entity sponsors, the gifts must be related to the department's public purpose for distribution to the public. The department may not solicit gifts from the entities that invite their participation and must avoid the implication that donations to the department are the *quid pro quo* for departmental participation.