

## Anne Arundel County Ethics Commission

### Advisory Opinion 97-165

#### Issues:

1. Whether a county department may solicit contributions toward an annual picnic to be held for employees and their families?
2. Whether the department may accept contributions toward the employees' picnic from private donors who are solicited by a third party working on behalf of the department?

#### Background:

A department of the Anne Arundel County government plans to hold a picnic for all its employees and their families. Because of the expenses involved, the department would like to solicit area grocery stores and perhaps other retail businesses to provide food items, such as hot dog or hamburger rolls, and perhaps some door prizes as well. If it is not permitted for the department to solicit private businesses to contribute to the picnic, the department would be interested in having a separately created "Friends of the Department" type of organization to solicit contributions without any involvement by the department itself.

#### Discussion:

The Anne Arundel County Ethics Law, Article 9, §3-106 prohibits any employee from soliciting a gift. This is an absolute prohibition, but the Ethics Commission has allowed exceptions for solicitations within carefully controlled circumstances and where the gift would benefit the public rather than individual or groups of employees. The rationale has been that these gifts are given to promote a legitimate county purpose or program. (See AO-97-41, AO-97-122).

In the instant situation, however, the gifts would be given for the benefit of county employees and their families. While it may be valuable and worthwhile effort to promote employee morale and intra-departmental relations, the gifts of food and door prizes would not benefit the public and would not be promoting the public purposes of the department. Therefore, solicitation of gifts would not fall within the permitted exceptions authorized by the ethics commission.

An alternative suggested by the department would be to have a private entity solicit donations to help fund the picnic. The entity would be created to support departmental activities of all types, including public purposes as well as the proposed picnic and other departmental activities.

This approach raises both solicitation and acceptance issues under the gift provision. The

State Ethics Commission has previously held that where the donations benefit the employee, they cannot be solicited even indirectly by a committee acting on behalf of the employee. See, State Ethics Opinion, 93-5, COMAR Title 19A. The State Commission concluded in that case that a sheriff could only accept donations to his legal defense fund if they were totally unsolicited, for instance, donations that were made as a result of "general public knowledge."

Even if donations are unsolicited, they cannot be accepted from "controlled donors," unless they fall within certain exceptions. A controlled donor includes any person or entity that does business with the county, is engaged in activities that are regulated or controlled by the county, has financial interests that may be affected in a manner different from that of the general public by the performance of the official duty of the recipient employee, or is a lobbyist with respect to the department. In the case of a service department such as the one requesting this opinion, it will be unusual to find a business entity that is not subject to some regulation by the department. Gifts from controlled donors can only be accepted if they fall within the enumerated exceptions listed in §3-106(c) of the ethics law. In the case of the picnic proposed by the department, the only types of donations that would be acceptable would include gifts of "nominal value or trivial items of informational value". This exception could include some items to be used as door prizes, but there is no exception that would permit the other types of donations sought by the department.

### **Conclusion**

The Ethics Commission concludes that neither the department nor any organization acting on its behalf, may solicit contributions of food or door prizes to help defray expenses of the proposed department picnic. These donations do not benefit the public and they do not promote the public purposes of the department. Unsolicited gifts of any type may be accepted from sources that are not "controlled donors", but only unsolicited gifts of nominal value may be accepted from any person or entity that is be subject to the regulations or authority of the department.

October 6, 1997

By: Anne Arundel County Ethics Commission  
William J. Howard  
Chairperson