

Anne Arundel County Ethics Commission

Advisory Opinion AO-97-41

Issue:

Whether the police department may solicit private insurance companies to donate anti-theft devices to members of the public who voluntarily agree to participate in a public safety campaign organized and operated by the police department, without violating the gift restrictions set forth in §3-106?

Background:

The police department is planning to initiate a public campaign to discourage car thefts in Anne Arundel County. The program is called, "Stop Thief." In this program, police officers receive permission from vehicle owners in advance, to stop private vehicles between the hours of 10:00 p.m. and 6:00 a.m. to check drivers' identification, without having probable cause. The program is voluntary. Citizens will sign an authorization allowing the police to stop their vehicles. They will be given a sticker to display on their cars that will say, "Stop Thief." As an incentive to participate, the police department would like to offer an anti-theft device known as "the club" to volunteer participants and would like this device to be donated by private insurance companies.

Discussion:

Section 3-106 of the Anne Arundel County Public Ethics Law provides two basic restrictions on gifts. The first restriction prohibits any county employee from soliciting any gift. The second restriction prohibits the acceptance of a gift by any county employee from a "controlled donor¹." A controlled donor is a donor who does business or is seeking to do business with the county, is subject to the control of or regulation by the county, has financial interests that may be affected by the performance or nonperformance of a county employee, or is a lobbyist.

A gift is, ". . . something of value that is given, regardless of form, without adequate and lawful consideration. §1-101(l)(1). The first question arising out of this inquiry is whether the donation of "the club" to every volunteer participant would constitute a gift at all. To receive the device, the owner of the vehicle must waive certain constitutionally protected rights to the police

¹ There are exceptions, not pertinent here, which permit county employees to accept certain specified gifts from controlled donors.

for a few hours every day. That waiver may very well constitute "adequate and lawful consideration." If receipt of the club under these circumstances does not constitute the receipt of a gift, but is actually an exchange of value for value, the gift restrictions of §3-106 would not even apply.

Assuming however, that the gift provisions do apply, §3-106(a) states that "An employee may not solicit any gift." Although this statement appears to be an absolute prohibition against soliciting gifts, the Commission believes that in the present situation there are competing interests that must be weighed in interpreting the true intent and the parameters of this provision.

The provisions on gifts, like the other provisions of the Public ethics law, were designed to promote trust in local government among the citizens to whom the benefits of government should accrue. When a county employee accepts a gift from people with whom the employee does business, an appearance of partiality and improper influence is created which erodes that trust. Gifts from controlled donors that benefit the employee, either personally or professionally, are the gifts that the ethics law requires be scrutinized and extensively restricted.

In the present case however, the gift of the club would be going to members of the public, not to county employees, so the only issue here is whether the police department may solicit these contributions on behalf of the public, for the promotion of an officially authorized county public safety program.

The Ethics Commission believes that the promotion of public safety and the encouragement of volunteerism are values that can and do go hand in hand with the concepts of ethics in the conduct of governmental affairs. If the police department follows certain guidelines to ensure that their solicitation of private insurers on behalf of the public does not create an appearance of favoritism, partiality, or especially undue pressure, then the "Stop Thief" program as designed, will be permissible under the ethics law.

In the first place, the program should receive the sanction of the county administration, so that the public is aware that this program is an official program of the county government, for the benefit of the county and its citizens as a whole.

In the second place, the police should solicit private insurers as a specifically targeted group, such as all the insurers that provide car theft insurance, or another relevant association. The police department should avoid approaching a few chosen insurers, such as the largest or most financially secure. The means by which the donations are to be made should be in writing and the amount, if any, of each insurer's contribution, should be kept confidential among the donors and not be made available to the police. In that way, those who choose to donate would not appear to be seeking favor from the department and those who choose not to donate would not be subjected, even in appearance, to unwanted pressure.

Conclusion

The Commission concludes that the "Stop Thief" program may include the solicitation and receipt of donations from private insurers on behalf of the public without violating §3-106 of the Public Ethics Law. Even if the receipt of the anti-theft device would not be, strictly speaking, a gift, the police department should follow specific guidelines to avoid the appearance of exerting undue influence in the creation and carrying out of this program and in the solicitation of donors.

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By: Anne Arundel County Ethics Commission

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