

Anne Arundel County Ethics Commission

Advisory Opinion

98 - 124

Issue:

Whether an employee or the employee's agency may accept an anonymous gift of a \$50 certificate to a local restaurant, without violating the general prohibition on gifts in §3-106 of the Public Ethics Law.

Background:

A county agency has inquired whether an employee may use a gift certificate to a local restaurant in the amount of \$50 that was given anonymously to the employee. The agency inquired whether, if the gift is not permissible for one employee, it could be used by two employees, or by the agency as a whole. For instance, the agency asks whether the certificate could be used to provide a lunch tray for all its employees in the office. The agency indicated that anonymous gifts of food are a fairly common occurrence in the agency, specifically that they are received "all the time".

Discussion

The Public Ethics Law, §3-106 prohibits an employee from *knowingly* accepting gifts from donors *whom the employee knows or has reason to know* have interests that may be affected by work the employee does in an official capacity. These donors, called "controlled donors", include:

- ▶ people doing business with or seeking to do business with the county;
- ▶ people engaged in activities that are regulated or controlled by the county;
- ▶ people with financial interests that may be substantially and materially affected by the performance of any official duty of the employee recipient; or
- ▶ lobbyists with the employee's agency.

While the ethics law generally prohibits an employee from accepting gifts from these enumerated donors, there are exceptions to this prohibition. One exception, which would appear to apply in this case, is the exception that permits "occasional meals and beverages of modest value".¹ Even if the value of the meal is within acceptable limits, certain other factors may still

prevent the employee from accepting the gift. These factors are that:

- ▶ the gift would *tend to impair* the impartiality and independence of judgment of the recipient employee;
- ▶ the gift would *appear to impair* the employee's judgment because of the gift's regularity, frequency, or value; or
- ▶ the employee *believes or has reason to believe* that the gift is *designed to influence* the employee's judgment.

Essentially, there are three issues to be resolved in answering this inquiry. The first issue is whether the employee knew or had reason to know that the gift was from a controlled donor. Since the gift is presumably anonymous, the answer to this question is that the employee does not know if the donor is a controlled donor. On the other hand, it is hard to imagine that a private citizen, without any business or regulatory connection to the employee's agency, would send an anonymous gift to an employee for no apparent reason. Therefore, the answer to this question must be that the employee should presume and would have reason to know that the donor of this gift is a controlled donor.

The second issue is whether the gift certificate falls within the permitted exception to the prohibition on gifts from controlled donors. The \$50 value is within the permissible limits for two people or for a group of people.

The third and most significant issue is whether any factors are present that would make an otherwise permissible exception to the gift prohibition no longer permissible. Construing the ethics law liberally as required by §1-102(c), the ethics commission generally presumes that gifts from controlled donors are designed to influence county employees unless circumstances indicate a more logical or obvious reason for the gift. Since the ethics commission presumes that this "anonymous" gift is from a controlled donor, the commission also presumes that it is given to influence the judgment of the recipient employee or the employee's agency.

Putting aside the technical requirements of §3-10, the ethics commission finds a much more compelling reason to conclude that this anonymous gift to a county employee is an impermissible gift. Based on its conclusion that there is no apparent reason for an uninterested person to present a valuable gift to a county agency or its employees, the ethics commission finds it difficult to believe that this gift is truly anonymous. Instead, it imagines a hypothetical scenario where a grateful licensee or other regulated person offers a gift to an inspector and is told that the inspector cannot accept gifts from a person doing business with the employee's agency. The grateful person indicates that if the gift is sent anonymously, that rule can be easily circumvented. If the ethics commission can imagine such a scenario, is it not likely that the public can also imagine such a scenario, regardless of its legitimacy?

The public ethics law is designed to promote the public's confidence in the honest and

impartial actions of county government. The most effective way to achieve this goal is through disclosure of the activities and interests of government officials and employees. The acceptance of "anonymous" gifts is the antithesis of disclosure and leads to doubt and conjecture about the honesty of the recipients of these types of gifts. Where anonymous gifts are accepted "all the time", there can be no confidence that decisions of the recipients are impartial or independent.

Conclusion:

The ethics commission concludes that anonymous gifts to county employees or to county agencies cannot generally be accepted. Exceptions may be allowed where the gift is given to the agency with specific instructions that the gift is to be used to promote the agency's public purposes and programs. Anonymous gifts to employees must be donated to charitable organizations that have the ongoing support of the county government, or to specific agency programs designed to benefit members of the public.

Date: _____

By: the Anne Arundel County Ethics Commission