

Anne Arundel County Ethics Commission

Advisory Opinion

98 - 24

Issue

Whether a county employee may attend a conference sponsored by a contractor with the employee's agency, where the contractor provides free meals and entertainment to the employee as part of the conference?

Background

A service provider to the county is holding a "client conference" over a three and a half day period at a resort out of state. On the first day of the conference, there will be a golf or tennis tournament, a golf or tennis lunch, an afternoon welcome reception, and an "opening dinner" with speakers. The second and third days, and the fourth morning feature educational programs, and group meals, one of which is a dinner dance. The brochure for the conference states that, "The 1998 Client Conference will bring you an abundance of informative sessions in a new format, a host of unparalleled networking opportunities, and many, many good times." Although the costs for transportation and lodging will be assumed by the participants in the conference, the contractor is hosting the conference and covering expenses for everything else, including meals, educational seminars and entertainment.

Discussion

The Public Ethics Law does not address the propriety of attending any conference, seminar, meeting or other activity held by a contractor. The only issue addressed by the ethics laws, is, who pays? Section 3-106 generally prohibits employees from accepting gifts from "controlled donors". In this case, the service provider sponsoring the conference is a controlled donor, because it is doing business with the county. Therefore, unless the proffered gift of meals and entertainment falls within an exception to the general prohibition, it may not be accepted.

One exception, at §3-106(c)(1) is for occasional meals and beverages of modest value. Another exception, at §3-106(c)(4) is for "reasonable expenses for food, travel, lodging, and scheduled entertainment of the employee for a meeting, conference, or other function, if the expenses are paid in return for the employee's participation in a . . . panel or speaking engagement . . .". The meals which are the subject of this opinion fall into the second exception, as "reasonable expenses for food . . ." rather than in the first exception. An occasional meal refers to one meal on an occasional basis, not the number of meals that would be provided in connection with a three or four day conference. In that case, the exception permitting acceptance of food and entertainment, applies only if the employee is a speaker or participates in a panel at the conference.

If the employee is not participating in any way other than as a member of the audience, the employee cannot accept the meals or scheduled entertainment provided by the controlled donor.

Even if the employee is scheduled to speak or participate in the panel discussion, a gift which would otherwise be considered a permissible exception is subject to further scrutiny. A gift falling within one of the listed exceptions cannot be accepted if it would impair, appear to impair, or is designed to impair the impartial and independent judgment of the recipient. To determine whether the gift would overcome this obstacle, it is necessary to examine various factors. First, is the gift so frequent, regular or valuable that it would appear to impair the employee's partiality? Second, what is the donor's purpose in offering the gift? Third, does the intended recipient of the gift have any influence, authority or impact on the contractual relationship between the county and the donor?

In this case, the conference appears to be an annual event. Although it is a regular event, it is not of such frequency as to appear to impair the employee's judgment. The value of the meals in connection with a conference would not be so excessive as to appear to impair the employee's judgment. However, the free entertainment, which consists of a dinner dance, and a golf and tennis tournament for the participants, childrens' activities, and a trip to a spa, a tour of a scenic area, and daily golf and tennis clinics for the participants companions, are a significant part of the conference. They are at least valuable enough to suggest that the sponsor's purpose in hosting this conference and in paying the bulk of the expenses is to impress its clients.

The event is called a "client conference". Although it does include some educational seminars, the great majority of time is devoted to entertainment or networking opportunities. The proposed recipient of the sponsor's generosity has influence over the continuation and renewal of any contracts between the sponsor and the county. Therefore, the conference would appear to be designed to impress the county employee favorably toward continuing the contractual relationship. If the intended recipient did not have any influence or role in contractual matters with the donor, the design to impair the independent judgment of the county employee would be absent and the gift of expenses would probably be permissible. If the invitation to attend the conference had not been directed toward a county employee with influence over contract matters with this donor, the apparent purpose to impair would be less obvious and probably less significant.

Conclusion

The Ethics Commission concludes that the county employee may not accept free meals or scheduled entertainment as part of the Client Conference hosted by this controlled donor. Although reasonable expenses for food, lodging, travel and entertainment can be a permitted exception to the gift prohibition when the recipient actively participates in the conference, there is no indication that the intended recipient plans to speak or participate in a panel discussion at

the conference. And the exception is not permitted if it impairs, appears to impair, or is designed to impair the impartial and independent judgment of the employee. In this case, the meals and extensive entertainment are of such value as to create the appearance of partiality. Additionally, the client conference is designed primarily as a marketing tool. It is simply good business to provide meals and gifts of extensive and valuable entertainment to a client with authority and influence over contractual matters involving the donor.

This conclusion does not imply that the conference may not be a worthwhile event for the county employee to attend. The Commission only advises that in order to avoid an actual or apparent conflict of interest, the costs of the conference, including meals and entertainment, should be paid by either the employee or the county.

Date: _____

By: The Anne Arundel County Ethics Commission