

November 7, 1998
RE: IO-98-150

You inquired whether the fire department may accept a gift certificate for several hundred dollars to be used to purchase equipment for the dive unit of the department. You stated that this last summer the fire department received a call from a county citizen who had lost a prosthetic leg while water skiing on the Magothy River. The leg had not floated as expected, but had disappeared under the water and the skier could not locate it. The fire department responded by sending its dive unit and happily, the divers recovered the prosthesis. In gratitude, the leg's owner and his relatives offered to give the divers a gift. The fire department responded that they cannot accept gifts for doing their jobs. Not content to express his gratitude in words, the skier gave a local vendor several hundred dollars to be used by the fire department to purchase equipment for the dive unit. The vendor holds a contract to sell dive equipment to the county fire department, which the vendor acquired through the bidding process.

The fire department was absolutely correct in telling the grateful skier that employees cannot accept personal gifts for performing their duties, even if those duties extend beyond the usual routine. Section 3-104 of the Public Ethics Law prohibits the use of the prestige, title or authority of the office or position for private gain. This provision effectively prevents an employee from benefiting financially from the performance of the employee's official duties.

Section 3-106(a) prohibits an employee from *soliciting* gifts. The ethics commission has previously advised that there is an exception to this blanket prohibition under certain circumstances. Where the agency solicits gifts for a program that is sanctioned by the county administration, promotes the agency's public purposes, and ultimately benefits the public as opposed to county employees, the solicitation may be permitted. See, AO-97-122, AO-97-165.

In this case, the gift was not solicited and the donor was told about the prohibition on receiving personal gifts. Like a gift certificate, the gift can only be used with a county vendor that sells diving equipment. It can only be used to promote the activities of the dive unit of the fire department.

There is nothing in the Public Ethics Law that prohibits unsolicited donations to an agency to promote its public purpose. As long as the fire department advises the grateful recipients of its services that payments and gifts are not requested, required, or permitted for individual employees, there will be no undue pressure upon the public to reward a public safety department for performing its job. For these reasons, the fire department may accept the gift of money to be used for the purpose of diving equipment to assist the dive unit, and ultimately the public that you serve.

Please call me if you have any additional questions.