

## **Anne Arundel County Ethics Commission**

### **Advisory Opinion**

**99-148**

#### **Issue:**

Whether the Fire Marshall and the fire inspectors in the county fire department may accept invitations to a party held by a local sprinkler vendor, whose installations are subject to inspection by the fire marshal's office.

#### **Background:**

A local sprinkler vendor is planning a party to celebrate its first ten years of business. It is planning to invite approximately 400 guests, including customers, business associates, employees, friends, and family. The party will be held at a marina, and will offer an open bar, swimming and a buffet dinner. Included on the guest list are approximately 15 employees of the fire marshal's office (as well as a couple of retired county fire inspectors). These county employees are charged with the duty of inspecting water sprinkler systems in new construction. The vendor sells and installs sprinklers, and is therefore subject to direct regulation by the employees invited to the party. The vendor indicated that the cost of the party will be about \$25 to \$35 per guest, depending on the actual number of people attending the party.

#### **Discussion:**

The relevant section of the ethics law is §3-106, which regulates the acceptance of gifts. Employees are not permitted to accept gifts from donors who are "engaged in activities that are regulated or controlled by the County". This prohibition would apply to this donor, whose installation of sprinklers is subject to inspection by the fire department. An exception to this rule is found in §3-106(c)(1), which permits the acceptance of "occasional meals and beverages of modest value". A party is generally considered to fall within this exception, if the value to the recipient is \$25 dollars or less. In this case, the value, estimated at \$25 to \$35 dollars per guest, may and probably will exceed the "modest" value that is generally permitted.

The exceptions that allow gifts from restricted donors to be accepted are not automatic. Even where a gift is generally permitted as an exception, it will still be prohibited where the gift would "tend to impair the impartiality and independence of judgment", "give the appearance of [impairment] because of the gift's regularity, frequency, or value", or where the "employee believes, or has reason to believe, the gift is designed to [impair].

The ethics commission presumes that county employees are honest and well-intentioned. It further presumes that the acceptance of an occasional meal (or party) of modest value, will not, in and of itself, tend to impair the judgment of an honest employee. The existence of other

factors may effectively rebut the presumption, and lead to the conclusion that impairment may occur. In this case, there appears to be no such factors, so the ethics commission concludes that the acceptance of this invitation would not "tend to impair the impartial or independent judgment of the recipient employee".

This conclusion does not end the inquiry. A party invitation, even if normally permitted by exception, cannot be accepted if it would give the appearance of impairing the employee's independent judgment because of its regularity, frequency, or value. While a weekly luncheon or an annual party might be considered "regular", a party given in celebration of ten years of business can hardly be considered to fall within that category. Nor is its monetary value to the recipients so great that the gift would appear to impair the judgment of a well-intentioned employee. Therefore, the gift does not "give the appearance" of impairing impartiality due to the gift's regularity, frequency, or value.

Another factor to be considered is whether the recipient employee believes or has reason to believe that the gift is "designed" to impair the impartial and independent judgment of that employee. Factors which should lead an employee to reach such a conclusion would include knowledge that the gift is offered during contract negotiations, disputes, or litigation; that the gift is offered while there is currently pending relevant legislation; or that the gift is offered exclusively or primarily to groups of employees that have influence in any official relationships with the donor. In AO-99-86, for example, the ethics commission advised that a bull roast to which county police officers were exclusively or primarily invited, was designed to impair the judgment of the police officers, and to facilitate the donor's business relationships with the police department. In the present case, the fire inspectors make up but a very small number of the people invited to the party. The party clearly was not designed for the purpose of impairing the independent judgment of the fire marshal's office.

However, other attendees at the party, particularly those in the business, might be impressed by this very public presence of the entire fire marshal's staff at a party hosted by the vendor. This impression may not be altogether positive. One might reasonably suspect that the fire marshal's office is "too cozy" with the vendor, thereby supporting an "appearance" of impropriety. This perception, regardless of its validity, may well affect the reputation of the fire department, or at least, the fire marshal's office.

**Conclusion:**

The ethics commission advises that according to the strict letter of the law, §3-106, employees of the fire marshal's office may accept the invitation to the party offered by the vendor, if the cost per person does not exceed \$25.00. However, the fire marshal's office should consider the possibility that its presence at a party given by an entity whose work it regularly inspects could cost more to its reputation as an impartial and professional agency, than any party may be worth.

Date: \_\_\_\_\_

By: the Anne Arundel County Ethics Commission