

## Anne Arundel County Ethics Commission

### Advisory Opinion

99-189

#### Issue:

Whether county employees may accept payment for food, travel, and lodging to attend a national conference in which the employees will participate as a team in a "college bowl" type of national competition between water utility employee teams from around the country.

#### Background:

Employees in the Bureau of Utility Operations in the Department of Public Works have competed as the Anne Arundel County team in the "Top Ops Challenge", a series of competitions held by a national organization called the American Water Works Association ("AWWA"). In 1997 and 1998, the county team placed 2nd and 3rd in the nation, respectively. In 1999, they won the regional competition, and are qualified to represent the county and the regional section of the AAWA in the national competition, which will be held in Denver, Colorado, as part of the annual conference of the members of the AAWA. The AAWA will pay, as it has done in the past, a percentage of these employees expenses to attend the conference. The county has in the past, paid the remaining expenses for the employees to attend the conference.

This year, a private entity that does business with the Bureau of Utility Operations, has offered to solicit donations from other similarly situated businesses to cover some of the cost of the trip for these employees. These businesses are also members of the AAWA, and would like to see the employees compete and undoubtedly win, the national competition.

#### Discussion:

Section 3-106 of the Public Ethics Law prohibits employees from receiving gifts from entities that do business with the county, particularly with the specific agencies that employ the intended recipients of the gifts. Section 3-106(c)(4), permits the acceptance of "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 at the meeting". Although expenses for travel are a specifically permitted exception to the gift prohibition, such a gift can only be accepted if: 1) it would not tend to impair the impartiality and independence of judgment of the recipient; 2) it would not give the appearance of doing so because of the gift's regularity, frequency, or value; and 3) the recipient employee has reason to believe that the gift is designed to impair the employee's independent judgment.

The ethics commission believes that the fact that the proposed donor does business with

the county is not sufficient to create a presumption of impairment. If it were, there would be no exceptions permitted in the law to allow employees to accept gifts of travel expenses. If there are additional factors beyond the existence of a business relationship between the county and the potential donor, that may give rise to a reasonable suspicion of impairment, the gift may not be accepted. Such factors may include, for example, currently ongoing contract negotiations or contract disputes, pending legislation or policy decisions that might affect the potential donor's relationship with the county, or any other matters that might affect an otherwise uneventful business relationship.

Participation in a competition between teams is not what is usually envisioned by the definition of a "panel", nonetheless, Webster's II, New Riverside University Dictionary, Houghton Mifflin Co., 1988, defines "panel" to include, "[a] group of people gathered to plan, discuss, or decide something or to participate in a game show or other radio or television program". *Accord*, American Heritage Dictionary of English Language, William Morris, ed.; American Heritage Publishing Co. & Houghton Mifflin Publishing Co., 1969-70. The panel that comprises the competition at the AAWA may not be on television, but it falls within the clear meaning of the "panel". It is intended to be educational as well as entertaining.

**Conclusion:**

The ethics commission advises that the exception outlined in §3-106(c)(4), permitting acceptance of reasonable travel expenses to attend a conference and participate in a panel would be applicable in this instance. However, the gift must be considered a gift to the Department of Public Works, and not to a division within the department, or to individual employees. The director of the department, or the director's designee, must determine whether the conference and competition fits within the agency goals, whether the potential donor or donors may have issues with the department or county that would create an appearance of a conflict of interest if the gift were accepted, and whether the expenses are indeed reasonable under the circumstances. The ethics commission can provide assistance in these matters if requested, but in the present instance, has not been made aware of any details which would help it make those determinations.

Date:

By: the Anne Arundel County Ethics Commission