

Anne Arundel County Ethics Commission

Advisory Opinion 00-119

Issue:

Whether a member of the county council may accept a gift of one year's free admission to a chain of movie theaters for the member and a guest, sent as a thank you for attending a ribbon-cutting ceremony.

Background:

An entity that operates a chain of movie theaters recently opened a new facility in the county. A member of the county council attended the ribbon cutting ceremony. Shortly thereafter, the council member received by mail, a thank you note from the company's vice president and CEO, along with a 2000 VIP Pass for the member and one guest. The pass is good at all chain locations, but is not transferable and is revokable at the discretion of the management.

Discussion:

Two sections of the Public Ethics Law are relevant to this discussion. Section 3-106(b) prohibits a county employee from accepting a gift from a donor who: 1) is doing or seeking to do business of any kind with the county; 2) is engaged in activities that are regulated or controlled by the county; 3) has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance of any official duty of the employee; 4) or is a lobbyist with respect to matters within the jurisdiction of the recipient employee.

It is clear that the donor falls within at least one of these categories. Prior to, and during construction, the movie theater, like other businesses under construction, was subject to regulation by the county in connection with the issuance of various permits, including for example, construction, electrical, plumbing, mechanical and occupancy. The theater is also subject to ongoing regulation by the fire department for compliance with public safety regulations and by the health department for compliance with food service regulations. The movie theater is also subject to local tax on admission charges, at a rate set by the county council. Therefore, the movie theater has been, and is currently engaged in activities that are regulated and controlled by the county. Although the county council may have no formal involvement in much of the regulatory scheme, it is not unreasonable to imagine that the donor may seek assistance from a member of the council in resolving problems that arise between the donor and the various regulatory agencies.

Gifts from these types of donors, called "controlled" or "restricted" donors, are generally

prohibited, unless they are specifically permitted by an express exception under §3-106(c). There is no exception in the law for a year's pass for two to any movie location operated by a movie theater chain. Certainly, the potential value of these passes would take it out of the exception permitted for gifts of nominal value, which the commission has generally limited to gifts of \$25 or less.

Even if the donor were not a controlled donor from whom gifts would be generally prohibited, §3-104(a) of the ethics law would prohibit the member from accepting this gift. This provision states that "an employee may not use the prestige, title or authority of the employee's office or position for the employee's private gain or the gain of another". Receipt of a significant gift as a "thank you" for attending a ribbon cutting ceremony constitutes a private gain to the recipient official resulting directly from the official's prestige and position.¹ Had the gift been given by a non-controlled donor for a reason not related to the recipient's official position, the gift would not be prohibited under §3-104. If the gift had been nominal, offered as a ceremonial gesture, so that the resulting "private gain" to the official would have been negligible, the gift would not be prohibited under §3-104. So, for instance, if the official had been handed two tickets to a movie, as part of the celebratory ceremony, the gift would have been acceptable.

Conclusion:

The provisions of the ethics law, §3-106 and 3-104, are not mutually exclusive. Under certain circumstances, a gift that may not be prohibited under §3-106, may be prohibited by §3-104, if it is a significant gift offered directly as a result of the prestige of an employee's position. Although it is unsolicited, acceptance by the employee would constitute the employee's use of that prestige for the employee's private gain. In this case, however, the donor is also a restricted donor, subject to the ongoing authority of various county agencies. The ethics commission therefore advises that acceptance of this gift would violate §3-106 (b) and §3-104 of the ethics law.

Date:

By: the Anne Arundel County Ethics Commission

¹ Section 3-104(b) provides that the performance of usual and customary constituent service by an elected official, without additional compensation, does not constitute the use of the prestige, title, or authority of office for private gain or the gain of another. This exception is designed to ensure that elected officials may attend ribbon-cutting ceremonies as a part of their constituent service, without appearing to give an unwarranted benefit to that constituent.