

## Anne Arundel County Ethics Commission

### Advisory Opinion 00-130

#### **Issue:**

Whether an offer, made by a vendor doing business with the county, to provide golf shirts to the participants in an annual county employees' golf tournament, may be accepted by the tournament organizer as a permitted exception to the general gift prohibition of §3-106(b).

#### **Background:**

In recent years, the county has hosted an annual golf tournament for county employees. The cost to each participant covers greens fees, golf cart, food, and prizes. Although the tournament is called the Anne Arundel County Employees Golf Tournament, employees may invite non-employees to join them. The tournament organizer who requested this opinion, expects that most of the estimated 130 or so participants will be employees.

The tournament organizer is a county employee, and an *ex officio* member of the Board of Trustees for the Anne Arundel County Retirement and Pension System ("the pension board"). Article 7, §1A-105, Anne Arundel County Code. This member also serves as an *ex officio* member of the three member investment committee of the board. §1A-205. Among the duties of the investment committee is to make recommendations to the full board about the use of outside investment managers, and the duties of those managers. §1A-206. The pension board, upon the recommendation of the investment committee, may retain and select outside investment managers. §1A-203. These managers report directly to the pension board, and serve at the pleasure of the pension board. There are several investment management firms that have been retained by the pension board. One of these firms ("the donor") offered to provide a free golf shirt to each participant in the tournament.

#### **Discussion:**

Section 3-106(b) of the Public Ethics Law, Article 9, provides that an employee may not accept a gift from an entity that: 1) is doing business 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 or nonperformance of any official duty of the employee; or 4) is a lobbyist with respect to matters within the jurisdiction of the recipient employee.

The potential donor does business with the county and has financial interests that may be significantly affected by the official duties of at least one of the intended recipients. For these reasons, gifts from this donor to county employees are generally prohibited, unless those gifts fall within a permitted exception. One exception permits employees to accept "ceremonial gifts

or awards of insignificant value". §3-106(c)(2). Another exception permits gifts of "nominal value."

§3-106(c)(3). An individual gift of a golf shirt, valued at \$25 or less, may be considered to fall within these exceptions. However, the actual and intended recipient of this gift is the tournament organizer. The gift will add value and interest to the golf tournament. The ethics commission believes that this gift is offered primarily to aid the organizer's efforts, and to create a sense of obligation on the part of one who has a major role in the donor's continued business relationship with the pension board. The gift's value to the organizer, which probably ranges between \$1300 and \$3250 is neither "insignificant" nor "nominal" within the meaning of the ethics law.

Even a gift of "nominal" value may not be accepted under §3-106(c), if: 1) the gift would give the appearance of impairing the recipient's impartiality and independent judgment because of its value; or 2) the gift's recipient has reason to believe that the gift is designed to impair the recipient's impartiality and independence of judgment. Admittedly, the ultimate recipients of the golf shirts may have little or nothing to do in any official capacity with the investment management firm that is offering to donate the shirts. In that case, impartiality is not necessarily an issue. In this case however, the ethics commission believes that the gift if intended to primarily benefit the tournament organizer.

**Conclusion:**

The ethics commission advises that the acceptance of the gift of golf shirts by the tournament organizer is prohibited because the donor is doing business with the county. The value of the gift, at least as to the primary recipient, is more than "insignificant" or "nominal" and therefore the gift does not fall within the permitted exceptions to the gift prohibition. The value of the gift and the close, official connection between the pension board member and the investment management firm, indicates a design to impair and creates an appearance of improper influence.

Date:

By: the Anne Arundel County Ethics Commission