

Anne Arundel County Ethics Commission

Advisory Opinion 00-131

Issue:

Whether a member of the county council may accept an invitation from a developer in the county to spend the day on a charter fishing boat.

Background:

A member of the county council and the member's spouse received an invitation to spend the day on a charter fishing boat with the president and vice-president of one of the county's largest commercial development corporations. The day trip will include breakfast and lunch. The total number of attendees will be eight.

At the present time, the development company is working on three large commercial projects in the county. It has already developed several other projects in the county, including at least three commercial "parks" and one residential development. The company representatives meet monthly with employees of the Department of Planning and Zoning. The company is a member of the National Association of Industrial and Office Properties ("naiop"), a trade association that engages in significant lobbying activities.¹ Although it is not registered to lobby in Anne Arundel County, the Maryland Chapter of "naiop" noted in its newsletter of March 2000, "County Legislative Update" that its Developers' Council met on at least one occasion with the Anne Arundel County executive to discuss modifications to permit and zoning laws. This update was contributed to the newsletter by the president of the development company that is hosting the charter fishing party.

Discussion:

Section 3-106 of the Public Ethics Law is relevant to this inquiry. That provision provides that county employees are prohibited from accepting gifts from donors who: 1) are doing or seeking to do business of any kind with the county; 2) are engaged in activities that are regulated or controlled by the county; 3) have financial interests that may be substantially and

¹ According to the Annual Report of the State Ethics Commission, naiop disclosed lobbying expenses of \$35,750.00 in 1999. According to its website, (www.naiop.org), "The National Association of Industrial and Office Properties provides commercial real estate professionals with effective support and guidance to create, protect, and enhance development and property values. The Government Affairs department is dedicated to proactively providing members with the latest and best intelligence from Capitol Hill and the State and Local level on legislative and regulatory issues most affecting the commercial real estate industry."

materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of any official duty of the employee; or 4) are lobbyists with respect to matters within the jurisdiction of the employee.

In the present instance, the host of the charter fishing party falls within at least three of the listed types of prohibited donors. As the developer of three significant projects in the county, the company is subject to regulation by numerous county agencies. The developer is most certainly involved in lobbying activities, and it has financial interests that may be significantly impacted by the public positions that may be taken by council members with respect to these projects. Members of the county council have frequently advocated for or against proposed development projects. Members have the authority, which they have exercised on occasion, to introduce legislation that can have significant impact on proposed or ongoing developments.

For these reasons, the host of the charter fishing party is a prohibited donor, one from whom county employees may not accept gifts unless those gifts fall within the limited exceptions set forth in §3-106(c). There is no statutory exception in this section that would permit this gift to be accepted by a member of the county council. While a breakfast or lunch of "modest value" might fall within the exception, a charter boat trip costing several hundred dollars cannot be considered a gift of "nominal value". Moreover, given the ongoing business concerns of the host company, acceptance of this gift by a member of the county council would create an appearance that the gift would "tend to impair the impartiality and independence of judgment of the recipient employee. . ."

Conclusion:

The ethics commission advises that a member of the county council may not attend an all day charter fishing boat trip as the guest of a development company, since the company is a prohibited donor, and the gift does not fall within any of the exceptions permitted by §3-106(c) of the ethics law.

Date:

by: the Anne Arundel County Ethics Commission