

Anne Arundel County Ethics Commission

Advisory Opinion 00-142

Issues:

1. Whether the county executive may accept complementary air fare from an airline company to promote economic development in the county.
2. Whether the county executive may accept payment of other expenses for the trip from the Anne Arundel Economic Development Corporation.

Background:

The county executive recently joined the governor, and other state and local officials on a "trade mission" to Ireland, to promote Anne Arundel County as an excellent location for business development. She received complementary airfare from Aer Lingus on its inaugural trip from BWI airport to Ireland. Officials of the Anne Arundel Economic Development ("EDC") made the trip as well, and the corporation paid for many of the county executive's other expenses.

Discussion:

Under the Public Ethics Law, §3-106(b), county employees may not generally receive gifts from controlled donors. The airline company does not appear to be a controlled donor. It does not do business, nor is it seeking to do business with the county. It is not regulated by any county agency. It does not have financial interests that may be affected by the performance or nonperformance of any official act of a county employee, and it has not been involved in county lobbying activities. For this reason, acceptance of the gift is not prohibited by §3-106(b) and the county executive may accept the free ticket to Ireland from Aer Lingus.

Under 3-104(b), a county employee may not misuse the authority of office for private gain. Since this trip has been undertaken to promote the business opportunities available in the county, the county executive is acting in an official capacity. The gift does not confer a "private" gain, within the meaning of §3-104.

Of more concern is the payment of other trip expenses of the county executive by the Anne Arundel Economic Development Corporation. The Corporation is not a county agency, but is a private organization, incorporated under the laws of Maryland. Although its services to the county may be invaluable, and its connection to the county intimate, its interests are not identical to those of the county in every instance. As a private entity, it would be considered a controlled donor for several reasons. It is doing business with the county, in that it is financed in major part through the county budget, pursuant to a grant agreement, it has financial interests that may be significantly affected by the decisions of the county executive, the county council, and other county agencies. And although it is not currently registered to lobby in the county, the EDC regularly appears before the county council, and most certainly meets with the county executive, to affect executive and legislative policy.

Because it is a controlled donor, the county executive may only accept trip expenses from the EDC, if those expenses fall within a specifically permitted exception to the gift prohibition under §3-106(c). Section 3-106(c)(4) permits an employee to accept reasonable travel expenses, including food, lodging, and scheduled entertainment, to attend 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. Obviously, a "speaking engagement" would involve a pre-scheduled speech or similar presentation by the participant. Informal or impromptu conversations or speeches would not satisfy this requirement. The itinerary for the county executive's trip, (attachment #1) indicates a number of meetings where the county executive will be expected to contribute as a participant. Indeed, the bulk of her time will be taken in lobbying for the county. These activities most certainly fall within the definition of a "speaking engagement".

Conclusion:

The ethics commission advises that the county executive may accept complementary airfare from Aer Lingus on a trade mission in her official capacity, without violating either §3-106(b) or §3-104(a). The commission further advises that other reasonable trip expenses of the county executive may be paid by the EDC under §3-106(c)(4), as an exception to the gift prohibition, as long as the gift is not offered to create an unfair advantage in EDC dealings with the county executive. Objective factors indicating an intent to impair would include pending county legislation of interest to the EDC, or pending matters of an adversarial nature between the county and the EDC.

Date:

by: the Anne Arundel County Ethics Commission