

**Anne Arundel County Ethics Commission  
Advisory Opinion 00-42**

**Issues:**

1. Whether, and under what circumstances a supervisor may accept gifts from subordinates.
2. Whether, and under what circumstances, employees may accept gifts of flower arrangements from donors that do business with the county.

**Background:**

On certain occasions, such as Christmas, Boss' Day, or birthdays, a supervisor in a county department receives gifts from subordinates. The supervisor has asked whether these gifts can be accepted without violating the ethics law, or whether the staff should be encouraged to make a gift to a charity in lieu of giving this supervisor a personal gift.

The supervisor has also stated that on occasion, grateful customers or vendors with the department have had flowers, plants, or food delivered to employees at the office. The supervisor asks whether employees can accept these gifts and whether the gifts can be taken home with the employee recipients.

**Discussion:**

Public Ethics Law §§3-104 (prestige of office) and 3-106 (regulating gifts) are relevant to these questions. Section 3-104(a) prohibits an employee from using the prestige, title, or authority of office for that employee's personal gain, or for the gain of another person. The ethics commission has interpreted this provision to prohibit supervisors from soliciting subordinates to contribute to charitable fund raisers or to give other types of gifts. See, AO-97-140. The reason for this rule is apparent. There is an inherent element of coercion in a request from a supervisor to a subordinate. A supervisor may make a "request" that is perceived by the subordinate to be an order. It is the prestige and authority of the supervisor that is being used, whether or not intentionally, to obtain the donation or other gift. For this reason, a supervisor may not request that subordinates make contributions to charity. The supervisor may not request that these employees make a contribution to a charity in lieu of giving the supervisor a personal gift. The good intentions of the supervisor cannot be imposed, under the guise of a request, upon employees who may feel that they have no choice in the matter.

On the other hand, solicitations from coworkers are not based upon the prestige, authority, or title of office. They may be annoying, but they are not coercive. As a result, they are not strictly prohibited by §3-104(a). While coworker solicitations may not be prohibited by §3-104(a), that same section would prohibit use of e-mail or any other county resources for the solicitation, since it is only by the authority of the employee's position that those resources are available.

While coworker solicitations do not constitute a misuse of the prestige or authority of office, the inquiry does not end there. Section 3-106(a) generally prohibits county employees from soliciting gifts. The ethics commission has determined that this provision does not prohibit charitable solicitations that are undertaken as part of a county program, specifically authorized by the county executive, to promote the public purposes of county government.<sup>1</sup> Those types of solicitations are not pertinent to the issues raised in this inquiry.

The prohibition on gift solicitation, like the prohibition on the inappropriate use of the prestige of office, is intended to avoid even the appearance of favoritism or partiality in the conduct of county business. If coworkers choose to give gifts individually or as a group to mark special occasions such as retirements, wedding or baby showers, birthdays, or holidays, they may do so, assuming that there is no element of coercion. While people may be invited to contribute for a gift, they cannot be required to donate in order to be included in a party. A gift card should not leave out individuals who do not contribute, but should instead state that the gift is "from the staff", or some other type of generic greeting.

The acceptance of gifts is also regulated by §3-106. Specifically, 3-106(b) prohibits a county employee from accepting gifts from certain donors that the ethics commission has labelled "controlled donors". These donors include: 1) people or entities doing business, or seeking to do business with the county; 2) people or entities engaged in activities that are regulated or controlled by the county; 3) people or entities that have 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 receiving the gift; and 4) lobbyists with respect to any matter within the jurisdiction of the employee. Gifts to supervisors from subordinates would be considered gifts from controlled donors. For this reason, gifts to supervisors must be limited to occasional meals and beverages of modest value, or other gifts of nominal value (\$25 maximum). The ethics commission considers both the value of the gift, and the amount of money spent by each donor, in determining whether the gift is of

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<sup>1</sup> For example, permitted solicitations include the United Way campaign, in which all county employees are invited and encouraged to contribute. County public safety agencies have been permitted to solicit contributions for public programs, to educate the public and to promote public safety initiatives. See, AO-99-199. Even where solicitations are permitted, great care must be taken to assure that there is no undue pressure placed on employees or members of the public to contribute to county programs. The county must insure that solicitations neither impair nor appear to impair the impartiality or independent judgment of county employees.

"modest" or "nominal" value.

The commission considers other factors in determining whether a gift is given to mark an occasion, or to impair the impartial or independent judgment of the recipient employee. For example, if a gift is given by an employee who is seeking a promotion, or who is being considered for termination, the gift may not be accepted, because it is reasonable to assume that the gift is designed to influence the supervisor's decision.

Gifts from other controlled donors to county employees are subject to the same restrictions. Gifts of nominal value may be accepted on an infrequent basis, provided that the gifts are not given to impair the employee's impartial and independent judgment with regard to the controlled donor. For example, a gift of nominal value given on a one time only basis, to thank a county employee for assistance would be acceptable.

**Conclusion:**

Under §3-104(a) and §3-106(a), supervisors may not solicit gifts, either personal or charitable, from subordinates. Coworkers may solicit contributions for gifts of nominal value, but may not take any actions that could be construed as coercive, such as excluding non-contributors from a gift card, or a party. Under §3-106(b) and (c), supervisors may accept gifts of nominal value from subordinates, on infrequent occasions, as long as the gifts would not appear and are not designed to impair the supervisor's impartial and independent judgment. County employees may accept an infrequent gift of nominal value from controlled donors, as long as there are no factors indicating that the gift would impair the impartial and independent judgment of the employee, or that the gift is designed to do so.

Date: April 10, 2000

By: the Anne Arundel County Ethics Commission