

## Anne Arundel County Ethics Commission

### Advisory Opinion

00-56

#### **Issue:**

Whether an employee of the office of the State's Attorney for Anne Arundel County may accept payment of reasonable expenses for transportation, lodging, and attendance at a national conference, where the proposed donor is doing or seeking to do business with the county that will involve the state's attorney's office and other county agencies.

#### **Background:**

The National Association of Drug Court Professionals (NADCP) will shortly be holding its 6th annual training conference in San Francisco. A number of state and county employees, who are involved in the drug court program in this county, will be attending. With one exception, the expenses of attending this conference will be paid through government grants, or through the budgets of the attendees' agencies. One employee of the state's attorney's office, whose job is to help manage the drug court program for that office, would like to attend the conference. A medical device company, Epitepe, Inc., that manufactures oral tests for HIV and has recently developed an oral test for substance abuse, has offered to pay the expenses for this employee to attend the conference. This county employee was previously employed by a drug company and became acquainted with a co-worker, who now works for Epitepe, Inc. This former co-worker indicated that the employee would be available at Epitepe's exhibit booth, to answer questions to company clients, employees, and other interested people, about the functioning of the drug court program in Maryland. The Epitepe employee indicated that the county employee would not be endorsing the product, but is familiar with Epitepe products from the employee's previous job. The county employee will be free to attend the conference sessions, but will be engaged at the exhibitor's booth when the employee is not attending the conference.

Epitepe has had one previous contract with Anne Arundel County, worth about \$4,200.00, paid in July 1998. The contract was for the purchase of HIV testing kits. Although there are other companies that produce an oral drug testing kit, Epitepe's product is different in that it is the only lab-based test. The county is interested in using an oral drug test, and it is predicted that oral testing will eventually replace the urinalysis test for substance abuse. Although an oral drug testing kit will probably be purchased by the county at some point, it is not certain that this company will be the vendor of choice.

#### **Discussion:**

The Public Ethics Law, §3-106(b), regulates the acceptance of gifts by county employees, and provides that an employee may not accept a gift from an entity that is doing or seeking to do business of any kind with the county. Epitepe, Inc., has done business with the county in the past, and it appears that it will seek to do business with the county again, with the development of this oral drug test. It also appears that the county is equally interested in purchasing an oral

drug test, and that this company may be the preferred vendor. The acknowledged interest in the sale and purchase of this product by both the manufacturer and the county supports the conclusion that Epitope "is seeking to do business with the county". For that reason, unless the gift of travel expenses falls within a permitted exception to the gift prohibition, a county employee may not attend the conference at the company's expense.

Under §3-106(c) of the ethics law, a permitted exception to the gift prohibition would be, "reasonable expenses for food, travel, lodging, and scheduled entertainment of the employee for a meeting, conference, or other function, if the expenses are paid in return for the employee's participation in . . . a panel or speaking engagement." As part of the arrangement with the company, the county employee would be present on occasion, at the company's exhibit booth to answer questions about drug court practices in Maryland. The employee has knowledge of the operation of the drug court program in Maryland, but the employee is also acquainted with the company's products, having been previously employed by a company that was involved in a joint venture with Epitope. While Epitope is most certainly interested in providing answers to questions about drug courts, it is no doubt, equally interested in promoting its product. Participation in a manufacturer's exhibit, even if it is to provide information about Maryland's drug court experiences, does not amount to participation in a panel or speaking engagement; it is not part of the conference and is not scheduled on the conference agenda.

**Conclusion:**

The ethics commission advises that the county employee may not accept travel expenses from this donor, which is seeking to do business with the county. The gift of travel expenses is not offered in return for the employee's participation in a panel or speaking engagement at the conference. This conclusion is not meant to imply that the employee's attendance at the conference would not be valuable, or that the offer of the gift is not made in good faith. Section 3-106(b) prohibits the acceptance of the gift, requiring that the expenses for this conference be paid by the employee or the employer.

Date:

By: the Anne Arundel County Ethics Commission