

## Anne Arundel County Ethics Commission

### Advisory Opinion

99-219

#### Issue:

Whether a member of the county council may accept the gift of two tickets to an annual charitable dance from the host of the event, the North Arundel Hospital Foundation.

#### Background:

The North Arundel Hospital Foundation (the "foundation") is a non-profit private corporation, created to provide financial support for the North Arundel Hospital, Inc., (the hospital). Toward this end, it holds an annual charitable dinner dance. This year, the tickets to the dance cost \$225.00, of which \$100 is considered as a tax-deductible charitable donation to the hospital Foundation. The Foundation makes a gift of "dignitary tickets" to various people, including two tickets for each member of the county council. During the dance, the members of the county council, as well as the other dignitaries present, will be spotlighted and formally introduced. This year, the foundation expects about 800 people to attend the dance.

For the last two years, the county has appropriated money to the hospital directly, to help pay for the cost of expanding its emergency room. The annual grants are part of a commitment made by the former county executive to the CEO of the hospital to pay an amount of \$750,000 toward this project, in three annual increments of \$250,000. The first grant of \$250,000 was appropriated for fiscal year 1999, but for fiscal year 2000, the amount was decreased to \$125,000. The remaining amount of the pledge is scheduled for inclusion in the next three capital budgets.

#### Discussion:

Section 3-106 of the Public Ethics Law restricts the solicitation and acceptance of gifts by county employees, including elected officials. Generally, a county employee is not permitted to accept gifts from controlled or restricted donors. These donors fall into four categories:

- 1) people doing business with, or seeking to do business with the county;
- 2) people who are engaged in activities that are regulated or controlled by the county;
- 3) people whose financial interests may be substantially and materially affected by the performance or nonperformance of any official duty of the proposed recipient employee; or
- 4) people who are lobbyists with respect to matters within the jurisdiction of the employee.

In the present case, it is the hospital, not the foundation, that is the direct recipient of the grant that the county has appropriated for the emergency room expansion. Technically, it is the hospital and not the foundation, that "has financial interests that may be substantially and materially affected" by the performance of the official duties of the members of the county council. Therefore, the hospital would be a restricted donor, and gifts from this donor would be either restricted or prohibited. Although the foundation is not a party to the grant agreement between the county and the hospital, it has also has financial interests that may be affected, in a manner distinguishable from the public generally, by the actions of the county council. For example, the foundation's fund raising goals are offset by gifts or grants from outside sources. It is clearly in the best interests of the foundation to obtain county and other funding for the hospital's capital projects.

Following the legislative policy to liberally construe the provisions of the ethics law, the ethics commission believes that as to the grant from the county to the hospital, both the hospital and the foundation are to be considered restricted donors under §3-106(b)(3). As a result, a gift from the foundation to the members of the county council would be generally prohibited.

However, a gift that is generally prohibited may be accepted if the following conditions are met:

- §3-106(c);
- judgment 1. the gift is permitted by one of the specifically defined exceptions set forth in
2. the gift would not tend to impair the impartiality and independence of
3. the gift would not give the appearance of impairing the impartiality and independence of judgment of the recipient employee because of its regularity, frequency, or value;
- designed 4. the employee does not believe or have reason to believe that the gift is to impair the employee's impartiality or independent judgment.

The gift of tickets to a charitable dance may fall within the exception set forth in §3-106(c)(5). That exception permits a member of the county council to accept gifts of tickets to attend charitable, cultural, sports, or political events, if the purpose of the gift is to take part in a ceremony involving the office. The dance is a charitable event, held annually, so the threshold question is whether the gift is offered for the purpose of taking part in a ceremony of the office.

Some of the types of "ceremonies" involving the office that would justify the acceptance of tickets to events would be receiving an award or acknowledgment of a gift from the county to the event holder, a photographic opportunity for publication, giving a speech, or a formal introduction or acknowledgement of the presence of county elected officials. Clearly, one of the purposes of the gift is ceremonial.

Even if the gift is a permitted exception, it can only be accepted if it does not impair or

appear to impair the impartial or independent judgment of the recipient, and if the gift was not given with the intent to impair independent judgment.

Presumably, the ethics law specifically permits the acceptance by elected officials of tickets to charitable, cultural, sporting, or political events, because it is in the county's best interest that its elected officials to attend certain important community occasions. The hospital and the foundation are important and integral parts of the community, and the dance is attended by hundreds of people. Elected officials need to show support for, and interest in, the activities that make up county life. Public support for the work of county hospitals and other services is a part of the job of an elected official. In most cases, attendance at charitable events is costly, and since funding needs are ongoing, many charitable organizations hold fund raising events annually. The ethics commission will not presume, where the law does not, that the value of the tickets and the annual basis on which they are offered, would impair the impartial or independent judgment of an elected official.

There must be other factors present, in addition to the gift's regularity and value, that would tend to impair impartial and independent judgment, or that would lead the council members to believe or have reason to believe that the gift is designed to impair impartiality. In other opinions, the commission has advised that the existence of pending legislation could be one of those factors. See, AO-99-189 and AO-99-148. However, in this case, the county's commitment to fund the hospital's capital project has already been made. It is unlikely that the acceptance of tickets to the foundation's annual charitable function will affect that pre-existing commitment.

**Conclusion:**

The ethics commission advises that tickets to the foundation's charitable dinner dance, offered by the event's host, may be accepted by the members of the county council under the exception for charitable events in §3-106(c)(5) of the ethics law. The formal acknowledgment of the council members at an important community function constitutes a sufficient ceremony involving the office. The county's tradition of supporting area hospitals as well as its current financial commitment refute the notion that the gift is designed to impair the impartial or independent judgment of the council members. This opinion does not address the issue of whether this gift constitutes a lobbying expense or whether the foundation's activities with regard to the county council constitutes lobbying within the meaning of §1-101(q).

Date: January 10, 2000

By: the Anne Arundel County Ethics Commission