

July 12, 2000

Re: IO-00-103

You inquired whether an employee in your department may accept a gratuity of \$100 for participating in a market research survey. The marketing company advised that this survey was directed at governmental users of desk-top computers, and participants were being sought from federal, state, and local xxxxx agencies. In return, the company offered the participants a direct gratuity, or a donation to a favored charity, at the participation's direction.

The gratuity offered is not a gift under §3-106 of the Public Ethics Law, but is in fact, a fee for services rendered. Section 3-104(a) prohibits an employee from using the prestige, authority, or title of the office or position for the employee's gain or for the gain of another. A fee or honorarium would benefit the employee, and a donation to charity would benefit another. The use of the prestige of office involves the fact that the employee's participation was requested because of the employee's county employment. Although the employee did not seek out this opportunity, the offer was extended directly because of the employee's county position. For this reason, the employee may not accept a direct gratuity or a donation to charity.

This conclusion is supported by opinions of the state ethics commission, which has consistently advised that a fee offered for a lecture given by a state employee, would be prohibited by the prestige of office provision of the ethics law, if ". . .the activity flowed directly and immediately from the individual's state duties". COMAR 19A: Opinion 83-11. Participation in a marketing research survey is a similar type of service.

The ethics commission regrets that it was unable to provide you with a more timely response. Because of this delay, the commission will take no action with regard to this matter, but hopes that this letter may provide guidance for the future. Thank you for your inquiry.

Sincerely,

Betsy K. Dawson
Executive Director