

Anne Arundel County Ethics Commission
Advisory Opinion
01-142

Issues:

1. Whether a department may solicit outside sources for prizes to give as awards to employees who make contributions to the United Way's county government campaign.
2. Whether a department may accept unsolicited gifts from outside sources to give as awards to county employees for making large contributions to United Way.
3. Whether a department may give a "day off" as an incentive award.

Background:

The county participates in the annual United Way fund raising campaign. County employees receive a form on which they indicate the amount of the contribution, if any, that they choose to give. One department would like to offer incentives to its employees to encourage contributions. Among the ideas that the department is exploring is to solicit restaurants and other businesses in the area to give gift certificates or merchandise that can be given by the department to the largest contributors among the employees. Additionally, one of the employees has offered to contribute a bushel of crabs to the department to be given as a prize to the group that makes the largest donation in the department. Finally, the department would like to offer a "day off" to one or more employees who, as organizers of their department's fund raising efforts, collect the largest amount in contributions.

Discussion:

The controlling provisions in this inquiry are §3-104 (prestige of office) and §3-106 (gifts). The first provision prohibits an employee from intentionally misusing the prestige, title, or authority of office or position for the employee's personal gain, or the improper gain of another. For example, an employee with supervisory authority over other employees would violate this provision if the supervisor told those employees that 100% participation in a charitable fund raiser was required or expected. The supervisor might explain the importance of giving contributions, but the supervisor may not require employees to contribute, either directly or by implication.

Similarly, the supervisor may not use the authority of the office to confer a benefit that is not within the supervisor's authority to give. If the supervisor gives a "day off" to employees for contributing to the campaign, without having the authority to do so, the supervisor may be violating §3-104(a) of ethics law. While the Office of Law or the Office of Personnel can give a more definitive answer, it appears that Article 8, §1-305.1 of the county code authorizes only the Chief Administrative Officer, and not department heads, to grant this type of leave.

The solicitation of gifts by county employees is prohibited by §3-106(a). The ethics

commission has consistently interpreted this provision to prohibit the solicitation of those gifts that would personally benefit county employees. See, AO-97-122, IO-00-126. It would be permissible for employees, acting in an official capacity, to solicit gifts that will benefit county citizens pursuant to a legitimate county purpose or program. See, AO-98-95, AO-97-162, AO-97-41, IO-00-46, IO-98-85.¹ In the instant case, the gifts that would be solicited would be awarded to county employees for their personal benefit. This type of solicitation is therefore prohibited by §3-106(a).

The acceptance of an unsolicited gift from a controlled donor² is permissible under limited circumstances, and only if the gift is of nominal value, generally \$25 or less. The reason for this rule is obvious. The public should never have cause to believe that a gift is offered to, or accepted by an employee in exchange for preferential treatment, or as a "pay off". Before accepting any gift, the department must determine whether the donor is a controlled donor, and whether the gift is of nominal value. It is possible in this situation, that any gift donated as an incentive award to employees may reasonably appear to have been solicited - how else would the donor know to offer it? If a county employee offers a gift to the employee's own department for use as an incentive award, knowing that the department is looking for incentives awards, is that gift truly unsolicited?

Conclusion:

The ethics commission advises that a county department may not solicit gifts from any source to give as awards to employees for participating in a charitable campaign. The department may accept gifts only if those gifts are clearly unsolicited. In the case of controlled donors, a gift may only be accepted if it is of nominal value. Even if a gift from a controlled donor meets this criterion, it may not be accepted if there are circumstances which could reasonably lead to the conclusion that the gift is given to impair the impartial and independent judgment of the recipient. The commission also advises that awards of a "day off" may only be given with the approval of the Chief Administrative Officer.

Date: _____

By: the Anne Arundel County Ethics Commission

¹ Even when solicitations are permitted, they must be conducted within strict guidelines to insure the county employees are not targeting controlled donors, or in any other way misusing the prestige or authority of their positions.

² A controlled donor is a donor who: 1) is doing or seeking to do business of any kind with the county; 2) is engaged in activities that are regulated or controlled by the county; 3) has 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; or 4) is a lobbyist with respect to matters within the jurisdiction of the employee.