

March 21, 2001

Re: IO-01-31

You inquired whether the IT manager in your department may accept an invitation to attend an all-expenses paid conference hosted by Mobile Insights, Inc. You stated that your department is a significant user of information technology, and is very interested in learning about, and improving its own mobile communications and access to information.

The conference to which the manager has been invited is being hosted by a corporation called Mobile Insights, "the leading analyst firm in the mobile and wireless industries". The paid expenses, including the conference registration, hotel accommodations for three nights, round-trip airfare, total over \$4,000 in value. The IT manager would not be speaking or participating in the conference in any way other than as an attendee.

The Public Ethics Law, §3-106(c)(4), permits the acceptance of a gift of travel and conference expenses from a controlled donor, only if the expenses are paid in return for the employee's participation in a panel or speaking engagement at the conference. Since your IT manager will not be speaking, the only question that remains is whether the donor of the gift is a "controlled donor" within the meaning of §3-106(b) of the ethics law. If the donor of the gift is a controlled donor, the gift may not be accepted.

Mobile Insights, Inc, the host of the conference, is not a controlled donor. Mobile Insights is neither doing, nor seeking to do business with the county, is not engaged in activities that are regulated or controlled by the county, does not have financial interests that may be substantially and materially affected by the performance of any official duty of the intended recipient of the gift, and is not a lobbyist. However, the conference is sponsored by a number of mobile computing and data communications industries. At least one of the largest sponsors of the conference does business with the county. It is no doubt likely that all of the sponsors are seeking to do business with the county. According to the webpage promotion for the conference, accessible at [:www.mobileinsights.com/gomobile/gomo2001SPRINGsponsors.html](http://www.mobileinsights.com/gomobile/gomo2001SPRINGsponsors.html): the conference is offered to:

"bring together the leaders in the mobile computing and data communications industry with the top IT executives *responsible for decisions and purchases of mobile products and services in their organizations*. The leading companies that produce these products and services sponsor Go Mobile 2001." (*emphasis added*.)

The corporate host confirmed that the sponsors are paying for the costs of the conference. In that case, the companies seeking to do business with the county, the controlled donors, are the ones really offering this gift.

A similar conclusion was reached in advisory opinion AO-98-31. A member of the Board of Trustees of the Anne Arundel County Retirement and Pension System was invited to attend and speak at a conference held by a corporation that was not a controlled donor, but the "sponsors" were investment management companies. The corporation's brochure for the conference stated, "This year's summit will place a particular emphasis on obtaining the decision-makers within the Fire and Police population." The board of trustees has the power to make investments and to retain external investment managers to invest the county's assets (including those earmarked for police retirees). (Although the board member was asked to speak, which is different from the present case, the ethics commission said that the expenses still

could not be accepted. The commission acknowledged that the conference would be educational but added that its primary purpose was marketing, and was therefore, designed to influence and impair the employee's judgment.)

The commission has issued at least two other opinions supporting this conclusion. I will be glad to make copies of these opinions, IO-98-22 and IO-99-64, available to you upon request.

Finally, these opinions are consistent with the opinions of the State Ethics Commission, which relies upon the same gift law. They generally conclude that if the conference is conducted as a marketing technique, it is in fact, designed to impair the impartial and independent judgment of the employee who has some decision making role in the matter. In Opinion No. 81-6, the State Ethics Commission reviewed the facts underlying an all- expense paid invitation to a data processing employee to attend a seminar offered by a controlled donor with the employee's department. The commission noted that,

". . . The seminar invitations have been extended to data processing executives, rather than operations personnel; the seminar is to address trends in technology; participants are to be met by their "Account Representative"; and the seminar is being held at the 'Marketing Support Center'. All of these circumstances would seem to imply that the seminar is a part of the Corporation's marketing or sales program. It would therefore not be unreasonable to conclude that, whatever the *actual* effect on an employee's judgment, the *intent* is to influence his views in favor of the Corporation. . . . We believe that the facts of this case reflect a relatively clear example of a situation where a private entity's marketing objectives compel the conclusion that the intention is to influence an official's views in favor of the entity."

Based upon these precedents, the ethics commission advises that the IT manager may not accept the invitation to an all-expenses paid conference. The gift from controlled donors does not fall within the permitted exception for travel expenses, since the employee is not participating as a speaker at the conference. However, even if the employee were participating as a speaker, the gift would probably be prohibited because as a marketing strategy, it is designed to impair the independent judgment of the recipient employee. The employee may attend the conference if the county pays for the trip, of course, and it may be in the county's interest to do so, if the trip is determined to be an important educational opportunity.

Thank you for your inquiry. If you have other questions, please call any time.

Sincerely,

Betsy K. Dawson  
Executive Director