

## The Anne Arundel County Ethics Commission

### Advisory Opinion 04-17

#### Issue:

Whether county employees who participated in an exercise program organized by the health department, the county administration, and a local hospital, may accept gifts and coupons offered by various donors to acknowledge the participants' achievements.

#### Facts:

The county, in conjunction with the health department and the Anne Arundel Medical Center, initiated a stair climbing program for county employees as part of a physical fitness program. As the program nears its completion, the organizers would like to award the winning teams and individuals with prizes to recognize their achievements. Prizes will include duffle bags, cookbooks, step counters and similar items, and a grand prize of a free massage to the highest achieving individual participant. The massage is being offered by the hospital directly, but the other items, including a plaque for the winning team, are being contributed either by the health department directly or by the hospital to the health department. Additionally, a local restaurant would like to donate a one dollar coupon to each participant in the program.

#### Discussion:

There are two provisions of the ethics law that are relevant to this issue. First, county employees are not generally permitted to accept gifts from controlled donors. §5-106(b). The Anne Arundel Medical Center is a controlled donor because it does business with the county. So in most cases, a county employee would not be permitted to accept a gift from the hospital.

An exception to this provision permits employees to accept awards of insignificant monetary value. §§5-106(c)(2)(ii) or unsolicited gifts of nominal value. The word "insignificant" is defined as "trivial", "small", and "meaningless". Webster's II, New Riverside University Dictionary, 1988. The word "nominal" is defined as "existing in name only", "small", trifling." Id. As a practical matter, the ethics commission has defined "nominal" to be less than \$25, and it now concludes "insignificant" to mean the same. See AO 01-142.

In determining value, the ethics commission also looks at the overall value of the gifts if there is more than one, as well as the value of each gift to the recipient. See IO-98-01. The reason for this approach is to ensure that larger entities that can afford large gifts do not have an advantage over smaller entities. See, IO-98-01. In this case, the total number of gifts is less than 20.

Another provision of the ethics law prohibits employees from receiving gifts or other benefits because of their positions. This provision is designed, in part, to ensure that employees do not expect or receive large rewards or gifts from grateful citizens or business entities. In this case, the stair climbing program was only open to county employees, because of their positions as county employees. Again however, if the value of each award is under \$25, the gifts may be accepted by the employees. This includes the gift of a \$1 off coupon to a local restaurant may also be accepted because it is of nominal value.

It should be emphasized that these gifts may only be accepted if they were truly unsolicited. When a group of entities organize a program such as the one described herein, it would seem reasonable to conclude that plans to give awards would be one of the subjects discussed. It would appear reasonable to conclude that even if the county did not solicit these awards, it participated in the discussion and encouraged the offer of these awards. While only the participants know whether the county solicited these awards, a reasonable person could conclude the county did at least participate at some level in the discussions of these awards prior to their actually being offered. As the commission said in AO-01-142, "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 gift is offered as an award, knowing that the county is interested in giving awards, "is the gift truly unsolicited?" If it is unsolicited, it may be accepted.

Conclusion:

The ethics commission advises that county employees who participated in the stair walking program initiated by the Anne Arundel Medical Center, the health department and the county administration, may accept unsolicited gifts as awards from controlled donors, including the hospital, as long as the value of each gift is less than \$25. These same employees may also accept a one dollar off coupon offered by a local restaurant.

Date: February 23, 2004      By:      The Anne Arundel County Ethics Commission