

September 21, 2005  
Re: IO-05-60

You inquired whether you may accept on behalf of the county, a raffle prize of two airline tickets, offered at a United Way campaign meeting that you recently attended as part of your county job duties. You have asked this question in advance of the drawing, without any expectation of actually winning the raffle, because you want to know how to respond if you do win the prize. The answer is that if you win the airline tickets, you may accept them on behalf of the county subject to certain restrictions as to their eventual disposition.

Under the gift provisions of §5-106(b) of the Public Ethics Law, employees may not generally accept valuable gifts for their personal use from “controlled donors.” As an entity that “has a financial interest that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the employee’s official duties”, the United Way is probably a controlled donor.

However, even if it is not a controlled donor, employees are also prohibited from accepting gifts that are offered to them because of their official positions. §5-107(a). Since you and other county employees attended this meeting while on the job, it would be an “intentional use” of the prestige of your position to accept a gift given to you in an official capacity.

The county government on the other hand, may accept gifts of value, in order to fulfill its purposes of promoting the health and welfare of its citizens. In a number of opinions, the ethics commission has advised that the county may accept gifts as long as the gift benefits the public, and not individual employees. *See, e.g.*: IO-03-80, IO-03-53, AO-02-64, IO-00-152, IO-00-46, IO-99-54, IO-98-150, AO-97-162. If the tickets were accepted for the county and then offered as an incentive award to an employee for participation in the United Way campaign, the ultimate beneficiary of the gift would be an individual county employee. That type of use of the tickets would not be consistent with the ethics law.

One alternative to giving the tickets to an employee as a gift, would be to auction the tickets to employees as part of the United Way campaign kick-off events. The county could contribute the proceeds of the auction to the United Way. The employee who buys the tickets at auction would not be receiving a gift but would be paying adequate and lawful consideration for tickets. A second alternative would be for the county to donate the tickets to the United Way (or any other charitable organization or county program). With either alternative, the county would be using the tickets to benefit its citizens. These suggestions are offered by way of illustration only; the county administration may certainly identify its own best use of the tickets to benefit the public.

Thank you for your inquiry. If you have any additional questions, please call me. And good luck with the raffle!

Sincerely,

Betsy K. Dawson  
Executive Director

