

July 27, 2006

Re: IO-06-54

In response to a recent communication between the ethics commission and the public safety departments, you raised a number of questions about the propriety of an order issued by your department restricting the acceptance by uniformed officers of discounted tickets to a political fundraiser. The ethics commission will address your questions and comments in the order you presented them.

The recent communication from the ethics commission that led to your inquiry, advised the public safety departments that uniformed employees could not accept the discount offered to them through an invitation that was apparently posted in various county locations. The invitation, from which the candidate's identifying markers have been redacted, appeared substantially as follows:

STATE'S ATTORNEY CANDIDATE  
XXXXXXXXXXXX  
IS HOSTING. . .

A SPECIAL EVENT FOR OUR MEN AND WOMEN IN UNIFORM

EARLEIGH HEIGHTS FIRE HALL  
161 Ritchie Highway, Severna Park 21146  
JULY 21<sup>st</sup>  
6-10pm  
SPECIAL GUEST – WORLD SERIES OF POKER STAR STEVE DANNENMANN  
AUTOGRAPH SESSION 6-7  
BRING CAMERA FOR PICTURES

ADMISSION - \$10 FOR FIREFIGHTERS, EMTs, POLICE, CORRECTIONAL OFFICERS,  
MILITARY, and THEIR GUESTS  
(Please bring ID)

PRICE INCLUDES AUTOGRAPH, FOOD BEER, SODAS  
QUESTIONS: CALL XXX-XXX-XXXXX  
XXX@XXXXXXXXX

REGULAR ADMISSION PRICE \$75

The first question you asked was whether a county employee must seek or receive approval through the departmental chain of command to contact the ethics commission for advice. An employee has the right to communicate directly with the ethics commission or its staff. See, §7-3-101. Since every employee is personally responsible for complying with the ethics law, the employee must have direct access to the ethics commission for advice in how to do that. Since an employee's name is redacted and other identifying features are excluded from

the opinion unless absolutely relevant to the opinion, it is unlikely that superiors will ever be aware that an employee has communicated with the ethics commission. In any event, the ethics commission will intervene, upon request, to assist an employee whose superiors retaliate against the employee for contacting the ethics commission.

Your next question was about the nature of the discount that was offered to uniformed public safety employees. The discount offered by the candidate was the offer of a gift. The ethics law defines a gift to mean the transfer of,

. . . anything of economic value, regardless of form, without adequate and lawful consideration. "Gift" does not include the solicitation, acceptance, receipt, or regulation of a political contribution that is regulated in accordance with the Election Law Article, of the State Code, or any other State law regulating the conduct of elections or the receipt of political contributions.

The gift offered by this candidate was worth \$65, the difference between the stated ticket price and the cost to the public safety officers. In advising that uniformed employees could not accept the gift, the ethics commission did not prohibit or regulate the candidate's solicitation, acceptance, or receipt of a campaign contribution.

There are two provisions of the ethics law that apply to prohibit uniformed public safety employees of the county from accepting this gift. The first provision, §7-5-106, prohibits employees from accepting gifts (except for gifts of "nominal value") from "controlled donors."<sup>1</sup> In this case, the candidate, an attorney with a criminal practice, is in the same situation as was presented in Advisory Opinion 99-86. In that opinion, the ethics commission advised,

The lawyer hosting this "Police Bull Roast" is a controlled donor in that the lawyer has business that can be substantially and materially affected by the good will of police officers who may perceive themselves to "owe" the lawyer a favor in return for the gift. The value of the gift, (which some officers overheard the lawyer to say was \$20 per person), while modest in and of itself, becomes extremely expensive when offered to all members of the police department, or even to the uniformed officers only.

Additionally, §7-5-106(c)(2) provides that only elected officials may accept tickets or free admission to political events, and only when it is offered by the host or sponsor as a courtesy to the office. (This restriction as to political events applies only where the value of the ticket or free admission exceeds a nominal value - \$25.00.)

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<sup>1</sup> 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) are lobbyists with respect to matters within the jurisdiction of the employee.

Even if the donor is not a “controlled donor”, in which case the gift prohibitions would not apply, there is one other provision of the ethics law that prohibits the acceptance of the discounted admission to the bull roast. That provision, §7-5-107, prohibits an employee from “intentionally [using] the prestige of office or public position for that employee’s private gain or that gain of another.” This discount was offered to uniformed officers specifically because of their county positions. If a uniformed officer were to offer the badge, employee identification card, or otherwise provide identification as a county public safety officer, that officer would be intentionally using the prestige of the position for private gain. The officer’s civilian guests are not subject to the restrictions of the ethics law, but their discounted invitations are dependent upon the officer’s county position. If the officer permits guests to accept the discounted admission, the officer would be using the prestige of the position for the gain of another.

You also asked whether this prohibition might violate state law because it interferes in some way with an employee’s statutory right to participate in political activity. Specifically you asked whether the discount is in fact, a “reduction in the political contribution level”, and for that reason is out of reach of the ethics law. The answer, with apologies to William Shakespeare, is that “a rose by any other name would smell as sweet.” To the candidate, the admission fee, whether it is \$10 or \$75, is a campaign contribution. To the recipient, the discounted admission fee is an invitation to attend an event where there will be food, beverages, political speeches, and other entertainment.

It is true that the state’s “anti-Hatch Act”, Article 24, Title 13, §§13-101 through 13-107, gives to employees of local government, the right to “freely participate in any political activity.” §13-103(1). The law also provides that, “Notwithstanding any other law of this State effective on or before June 30, 1973, or any local law, the restrictions imposed by this title are the *only restrictions* on the political activities of an employee of a local entity. . .” The only restriction on political participation imposed by this law is that an employee may not “engage in political activity while on the job during working hours.” §13-105(1).

The issue that arises because of this state law is whether the legal doctrine of preemption invalidates the ethics law’s gift prohibitions in this case. The preemption doctrine essentially provides that “. . .when a local government ordinance conflicts with a public general law enacted by the General Assembly, the local ordinance is preempted by the State law and is rendered invalid.” *Worton Creek Marina, LLC v. Clagett*, 381 Md. 499, 513 (2004). Put another way, “[t]he local ordinance is preempted when it either prohibits an act that under State law is permitted, or it permits an act that under State law is prohibited.” *Id.* While the ethics law prohibits employees from accepting this discount, it does not prohibit them from engaging in political activity. Employees may attend the event and they may contribute to the candidate. The ethics law does not prohibit that which the state law permits. The ethics law merely prohibits the use of county resources an employee’s personal gain.

Finally you inquired whether there are any circumstances under which a county employee would be permitted to accept free or discounted admission to a political event. While this opinion cannot give a definitive response to every situation that may arise, there are some general rules that may provide guidance to you when you are offered such gifts.

First, if the donor is a controlled donor, and if the value of the free ticket or discount exceeds \$25 in value, an employee may not accept the gift. Even if the value of the ticket is nominal, that is, under \$25 in value, an employee may not accept the gift from a controlled donor if acceptance of the gift would impair your independent or impartial judgment. In determining whether impairment would be an issue, the ethics commission considers objective factors, for example, whether there is pending business or a pending dispute between the potential donor and the county.

If the donor is not a controlled donor, the gift may not be accepted if it is offered to an employee because of the employee's position with the county. If on the other hand, a personal friend who is not a controlled donor offers an employee a free ticket to a political fundraiser- or to a ball game or a rock concert, for that matter, the employee may accept it. In any event, the ethics commission always advises that an employee should seek ethics commission advice before accepting any gift that may be questionable.

Thank you for your inquiry.

Sincerely,

Betsy K. Dawson  
Executive Director