



BEFORE THE MONTGOMERY COUNTY ETHICS COMMISSION
Advisory Opinion
07-07-015

An employee may not accept a gift from someone who is registered, or must register, as a lobbyist on a matter that is or could be considered by the employee's agency. An employee asks whether a gift of travel to a foreign country from a registered lobbyist may be accepted, when the lobbyist will receive restricted funding for the trip's air and ground transportation, lodging, and meals from an uninterested third party (a foundation), that also would designate the person(s) to be given the gift.¹ Under the proposed arrangement, the lobbyist would make the travel arrangements, arrange the program, and provide staff to serve as tour guides. The Commission concludes that the employee may not accept this gift under the facts presented.

Section 19A-16(c) of the County's ethics law provides that an employee cannot accept a gift from certain "registered lobbyists." Specifically, an employee must not knowingly accept a gift from any person if the employee knows or reasonably should know that the person is registered, or must register, as a lobbyist on a matter that is or could be considered by the employee's agency. § 19A-16(c)(1). Thus, interpreting a similar provision of the state ethics law,² the State Ethics Commission in a published opinion prohibited an employee from accepting a gift of travel and related expenses from a lobbyist. *State Ethics Commission Opinion No. 98-06* (Sept. 17, 1998) (available at <http://www.dsd.state.md.us/comar/advisory/98.06.htm>).

In this case, the lobbyist is providing the gift directly to the employee, albeit with funds "earmarked" by the foundation.³ In approving a similar arrangement under state law, the State Ethics Commission, in an unpublished opinion, concluded that the gift was

¹ The Montgomery County Ethics Commission is obligated to protect the identity of any person affected by a published advisory opinion, although the subject of an opinion can authorize disclosure of the subject's name and the names of the requesting party. Montgomery County Code (2004), as amended, Section 19A-7. In the submitted request, the Ethics Commission was advised only that a private foundation located in the County that is not registered or required to register as a lobbyist and does not do any business with the County would cover the costs of all transportation, lodging and ground transportation and meals in the foreign country. No other information about the foundation was provided.

² The state provision is found in Md. Code Ann., State Gov't § 15-505(b).

³ According to the information provided, the funds provided to the lobbyist by the foundation would be earmarked for the purpose of covering the expenses of the employee's travel and could not be used by the lobbyist for any other purpose.

from the foundation and not the lobbyist because the foundation “chooses the participants, provides the funding, and is the driving force behind the mission itself.”⁴ Although persuasive, we do not find this information conclusive. We need additional information about the relationship between the lobbyist and the foundation, specifically, whether they are distinct legal entities that can operate independently. For example, if the lobbyist could direct the foundation to reimburse its expenses, then we would view the gift as coming from the lobbyist rather than the foundation, despite any “earmarking” of funds.

Even if the parts of the gift for which the lobbyist received funding from the foundation were considered to be gifts from the foundation and not the lobbyist, the lobbyist would still be giving the employee an impermissible gift by making travel arrangements, providing staff to serve as guides, and coordinating all arrangements for and during the trip. The county ethics law defines a gift as “the transfer of anything of economic value, regardless of form, without an exchange of consideration of at least equal value.” § 19A-4(h). These services, provided by the lobbyist to the employee, have economic value and therefore constitute gifts to the employee. Under the facts presented, all indications are that the lobbyist is absorbing these costs. The employee, therefore, may not accept these gifts from the lobbyist under § 19A-16(c)(1).

The Commission concludes that the proposed arrangement violates the prohibition against accepting a gift from a registered lobbyist.⁵ In reaching this decision the Commission has relied upon the facts as presented by the requester. All significant facts have been recited in this opinion.

FOR THE COMMISSION:



Date: September 11, 2007

Richard N. Reback, Chair

⁴ A redacted version of that letter is attached. Published State Ethics Commission opinions are persuasive but not binding on the Montgomery County Ethics Commission. The status of the letter is perhaps best described as an “unpublished opinion” as it is not included among the State Ethics Commission’s published advisory opinions in the code of Maryland Regulations (COMAR). Nor, apparently, does it deal with an issue that was previously dealt with by the State Ethics Commission in a published opinion.

⁵ The query posed to the Ethics Commission was whether the employee could accept the gift under section 19A-16(c). Thus, the Commission has not examined whether the County could accept this as an unsolicited gift to a County agency under section 19A-16(e).