



BEFORE THE MONTGOMERY COUNTY ETHICS COMMISSION

Nina Weisbroth
Chair

Stuart D. Rick
Vice Chair

June 4, 2012

Advisory Opinion 12-04-007

You have inquired whether you may keep a \$200 gift certificate which you received as a result of your participation in a drawing. The drawing was conducted by an organization hosting a seminar attended by you on official County business. The drawing involved attendees of the seminar putting business cards in a container with one of the cards being pulled randomly from the container. You placed your Montgomery County business card into the container, and your card was drawn resulting in your receiving the \$200 gift certificate.

The host of the seminar where the drawing took place is a non-profit organization that supports certain activities important to your Department. In fact, your Department is a member of the non-profit organization, paying annual membership dues. As a member of the organization, your department is able to send employees to attend professional development seminars that the organization offers. The organization's annual membership dues are \$350. You are informed that your Department will be purchasing tickets for the organization's annual meeting and awards luncheon in June at a total cost of \$800.

At the outset, the specific circumstances associated with receipt of a gift are critical to a determination of acceptability under the Public Ethics Law. For the reasons stated below, you are required to return the \$200 gift certificate that you received as a result of the drawing.

The item you received is considered a gift pursuant to the Public Ethics Law. "Gift" is defined by Public Ethics Law section 19A-4(h) as "the transfer of anything of economic value, regardless of form, without an exchange of consideration of at least equal value. . . ." The transfer of the drawing prize is a gift pursuant to this definition.

Under the ethics law, employees are prohibited from receiving gifts from certain sources under specified circumstances. Pursuant to the gift prohibition at section 19A-16(c), one prohibited source from whom an employee is prohibited from receiving a gift is anyone who "does business with the County agency with which the public employee is affiliated." "Doing business with" is defined at 19A-4(e) as being a party to, negotiating, or submitting a bid to a County agency involving "a transaction" of \$1000 or more during a year. While the two transactions you cite to from this year between your Department and the sponsor of the event add up to over \$1000

Montgomery County Ethics Commission

100 Maryland Avenue, Room 204, Rockville, MD 20850
OFFICE 240-777-6670, FAX 240-777-6672

(\$350 + \$800 = \$1150), they were two separate transactions each of less than \$1000. Because there was no transaction (or contemplated transaction) of \$1000 or more, the gift acceptance prohibition is not triggered.

However, in addition to the restrictions on receiving gifts, there are restrictions concerning the solicitation of gifts by County employees. In particular, Section 19A-16(a)(3) of the ethics law prohibits an employee from soliciting a gift to the employee (or another persons or organizations) “while wearing all or part of an official uniform of a County agency, or while otherwise identifiable as a public employee.”

The Ethics Commission concludes that your entry into the drawing for the prize constituted the solicitation of a gift. The Ethics Commission further concludes that this solicitation is prohibited by the ethics law as you were identifiable as a public employee in connection with the solicitation by your attendance in your official capacity at the event and by the use of a business card identifying you as a County employee with respect to the solicitation. There are several exceptions to the prohibitions on solicitation of gifts identified in 19A-16(b), but none of those exceptions apply to the circumstances you have presented.

Section 19A-16(f) states that “a public employee who receives a gift that the public employee must not accept under this Section must . . . return the gift to the donor or transfer the gift to the County.” The Ethics Commission concludes that you must return the gift to the donor.

As the gift solicitation provision addresses the issue raised, the Ethics Commission does not address the issue of whether using your official business card to participate in the drawing discussed in this opinion constitutes use of prestige of office for private gain.

For the Commission:



June 4, 2012

Date

Nina Weisbroth, Chair