

ADVISORY OPINION NO. 89-14

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON NOVEMBER 2, 1989

GOVERNMENTAL BODY SEEKING OPINION

„ Superintendent for County Schools
Board Member

Opinion Sought

1. Could there be an appearance of financial gain present?
2. More specifically, could the commission view this activity of offering a 10% discount to students as pecuniary in regard to soliciting business by the hamburger chain of our school students?

Other Facts Relied Upon By The Commission

An elected board member is an employee of a chain hamburger restaurant in the town. His supervisor initiated a 10% discount to the county school students as part of a "Partnerships in Education" with schools program. The board member took no part in the decision but is employed by the hamburger chain. The board was not involved in the decision either.

Relevant Statutory Provisions Relied Upon By The Commission

West Virginia Code, Chapter 6B, Article 2, Section 5(b) states a public official or public employee may not intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. The performance of usual and customary constituent services, without compensation does not constitute the use of prestige of office for private gain.

ADVISORY OPINION

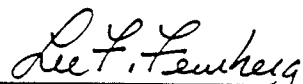
Subsection (b)(1) of the Ethics Act does not speak to appearances, it speaks to the intent and conduct of the public official. The elected school board member did not intentionally "use his elected office" in an effort to solicit the business for the hamburger chain of school students who he oversees.

The key here is whether this public official intentionally used his office for his private gain or that of another person (in this case his employer's business). It appears from the facts that the controlling motivation of the supervisor of the hamburger chain was assistance or benefit to the school students through the Partnerships in Education with Schools Program. The board member took no part in that decision.

It is also important to note that other food chains have the same opportunity to offer discounts to school students in order to benefit the students and increase their business as this hamburger chain did.

Furthermore, the school students are not forced or required to patronize the hamburger chain, but have the choice to use the discount or go elsewhere.

Therefore, the elected school board member is not in violation of West Virginia Code Section 6B-2-5(b)(1).



Chairman