

ADVISORY OPINION NO. 89-88

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 4, 1990

GOVERNMENTAL BODY SEEKING OPINION

An Executive Secretary in a State government office

OPINION SOUGHT

Whether it is a violation of the Act for a secretary to participate in a Travel Planners Club which gives prizes and awards to its members based on use of its services?

OTHER FACTS RELIED UPON BY THE COMMISSION

The secretary works in one of the executive offices of state government. Prior to coming to work for state government, she was a secretary in the private sector and regularly scheduled hotel reservations for the firm's clients.

One of the area hotels has as a promotional matter, established a club for travel planners. Membership in the club is conditioned upon making a minimum number of hotel reservations with the particular hotel. In her present job, she has not yet had occasion to make hotel reservations for individuals dealing with her state agency, but nevertheless remains a member of the travel club and may possibly make such reservations for others in the future. Currently, the secretary is a qualified member of the club by virtue of reservations she made while employed in the private sector. The secretary has been informed that others in her office have made reservations with this hotel for persons associated with the state agency.

Members of the club are entitled to a variety of awards, including a complimentary weekend for two at the local hotel, special discount rates at the hotel's other nationwide locations, discounts on certain merchandise in the hotel gift shop, and the possibility of winning "prize" holidays at a resort hotel.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b)(1) states in pertinent part that... 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.

West Virginia Code 6B-2-5(c)(1) states in pertinent part that no official or employee may knowingly accept any gift, directly or indirectly, from any person whom the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind with his or her agency.

(B) Is engaged in activities which are regulated or controlled by his or her agency.

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his official duties.

West Virginia Code 6B-2-5(c)(2) states in pertinent part that notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

(B) Ceremonial gifts or awards which have insignificant monetary value; and

(C) Unsolicited gifts of nominal value or trivial items of informational value...

ADVISORY OPINION

An analysis of the pertinent facts and statutory provisions (c)(1) and (2) follows:

1. As a public employee the secretary may not accept any gift, directly or indirectly, from any person whom she knows or has reason to know is doing or seeking to do business of any kind with her agency or has financial interests which may be substantially and materially affected.

2. However, acceptance of certain gifts are permitted such as: meals and beverages, and unsolicited gifts of nominal value, as set out in subsection (c)(2). However, these gifts do not include weekend lodging at the hotel, discounted merchandise or lodging and food at a resort hotel.

3. Therefore, it would be a violation of subsections (c) (1) and (2) of the Act for the secretary as a public employee, to receive gifts identified above which are based on supplying business to a company doing business with the employee's state agency.

An analysis of the pertinent facts and the statutory provision of (b)(1) follows:

It is the Commission's opinion that it would be a violation of subsection (b)(1) for the public employee to use her office (State Government Secretary) and job responsibilities (that is, making hotel reservations at a particular hotel) for her private gain (receiving prizes and awards).

  
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Chairman