

ADVISORY OPINION NO. 90-18

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 1, 1990

GOVERNMENTAL BODY SEEKING OPINION

The Commissioner of a State Department

OPINION SOUGHT

Whether it is a violation of the Ethics Act for employees of a State Department to visit and receive some complimentary services at various West Virginia tourist facilities as part of the training for their job?

OTHER FACTS RELIED UPON BY THE COMMISSION

As part of their job training, certain State employees who provide tourist information in a State telemarketing office receive free trips to various tourist facilities such as, State Parks, skiing areas and whitewater rafting areas. The State Department pays for most of the costs involved but some of the facilities provide complimentary services, such as a room, some meals, and free use of the facility.

The purpose of this program is to familiarize the telemarketing operators with first-hand knowledge of the state tourist potentials and particulars. These employees do not recommend specific facilities or operations when giving out information but are required to speak with authority and knowledge when asked specific questions about the facilities.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(c)(1) states in pertinent part that... No public employee may knowingly accept any gift, directly or indirectly, from any person whom the 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...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:

(A) Meals and beverages;

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

(E) Gifts of tickets or free admission extended to public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;...

ADVISORY OPINION

In light of the assertion that the telemarketer does not recommend a specific location but must speak generally with authority, it is the Commission's opinion that the acceptance of meals, lodging and the free use of the state tourist facilities are part of the State employee's job training and would not be considered a gift within the meaning of the Act. Therefore, it is not a violation of subsection (c)(1) of the Ethics Act.

The Commission was strongly influenced in its decision that no particular recommendations are made by the Telemarketers as to a particular location or facility.


Chairman