

ADVISORY OPINION NO. 90-96

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Lobbyist on behalf of an Association

OPINION SOUGHT

Whether it is a violation of the Act for two State Legislators who participate in a program presented by an Association to receive free meals and overnight accommodations at a Resort for themselves and their spouses?

OTHER FACTS RELIED UPON BY THE COMMISSION

The Association is a nonprofit trade association. Its membership is comprised of over 200 banks and their affiliated holding companies. The Association currently represents all of the state and national banks in West Virginia.

The Association holds its annual meeting at a resort-hotel complex which is attended by over 1200 member representatives. The Association's leadership provides programs for the attendees with speakers customarily including Association officers, representatives of the National Association, experts in the field and motivational speakers. Periodically, the Governor or members of Congress are invited to speak, or in election years, debate before those attending the convention.

For the 1990 convention, the Association has invited two State Legislators to participate in a panel discussion. The length of the panel discussion will be approximately 1 1/2 hours on Saturday morning.

The Association would like to invite the panelists to arrive on Saturday morning to participate in the legislative panel and to attend the Saturday evening banquet. The Association proposes to offer to pay room, board and mandatory service fees and taxes for the participating panelists and their spouses. The Association expects the expenditures to be approximately \$350 per Legislator.

As program participants, Legislators are able to educate the Association and its members on state policy concerns and on the laws affecting financial institutions. In return, Legislators are given the opportunity to learn more about the concerns of the financial institution constituents. Consequently, the Association generally asks its program participants to remain at the meeting following their scheduled appearances and attend a banquet which is scheduled for later that evening.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(c)(1) states in pertinent part that... No official may knowingly accept any gift, directly or indirectly, from a lobbyist...

West Virginia Code Section 6B-2-5(c)(2) states in pertinent part that...a person who is a public official may accept a gift described in this subdivision...The provisions of subdivision (1) of this subsection do not apply to:

(A) Meals and beverages;...

(D) Reasonable expenses for food, travel, and lodging of the official or employee for a meeting at which the official or employee participates in a panel or speaking engagement at the meeting;...

ADVISORY OPINION

The acceptance of certain gifts by public officials is permissible as set out in subsection 6B-2-5(c)(2). Specifically, a public official may accept from a lobbyist meals and beverages or the official's reasonable expenses for food, travel and lodging for a meeting at which the official participates in a panel or speaking engagement.

There is no monetary limitation placed upon the items (food, travel and lodging) identified in this subsection, instead the term "reasonable" has been incorporated. While expenses incurred on behalf of the Legislators may be considered significant, expenditures are being limited to the usual and customary basic charges of the Resort for room and board. The proposed treatment of the Legislators is the same as the treatment accorded other guests of the Association who accept reimbursement of expenses.

Travel and Lodging

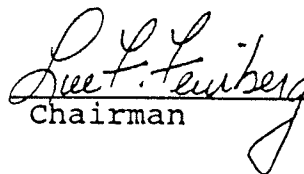
Since the two Legislators are participating in a panel discussion, their acceptance of reasonable travel and lodging expenses is permitted pursuant to subsection 6B-2-5(c)(2)(D). The Commission considers the travel and lodging amount to be reasonable since, if the Legislators were not permitted to accept reimbursement each Legislator would spend approximately seven to eight hours traveling round trip to participate in the conference. However, this subsection does not allow the Association to cover the expenses incurred by the Legislators if they choose to participate in any of the other available activities such as golf, carriage rides or health club services. Therefore, the Commission finds that it would not be a violation of subsection 6B-2-5(c)(1)(A) of the Act for Legislators to accept payment of overnight hotel accommodations and travel expenses from the Lobbying Association.

Meals and Beverages

The Legislators' acceptance of meals and beverages is permitted by two separate subsections contained within the Act. The first is subsection 6B-2-5(c)(2)(D) which provides for the acceptance of reasonable food costs when the public official is participating in a panel discussion or speaking engagement. Also, subsection 6B-2-5(c)(2)(A) of the Act allows a public official to accept meals and beverages from a lobbyist. Therefore, the Commission finds that it would not be a violation of subsections 6B-2-5(c)(1) and (2) of the Act for the Legislators to accept meals and beverages as well as attend a banquet hosted by a Lobbying Association.

Gifts to Spouse

Also, the Commission assumes that the Legislators' spouses are neither public employees or public officials and therefore are not governed by the provisions defining permissible gifts established by the Ethics Act. However, subsection 6B-2-7(8) of the Act requires public officials to disclose when filing their financial disclosure form, any gift afforded to their spouses which has a monetary value of over \$100 when such gift is provided by persons having a direct and immediate interest in a governmental activity over which the public official has control (as in the case of a lobbying Association).


Chairman