

ADVISORY OPINION NO. 90-100

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JULY 12, 1990

GOVERNMENTAL BODY SEEKING OPINION

A State Department Administrator

OPINION SOUGHT

- a. Whether it is a violation of subsection 6B-2-5(b)(1) of the Act for State employees and officials whose expenses are paid with State funds to participate in the "frequent traveler" and other award, bonus, "cash-back" programs offered by various businesses?
- b. Whether the State Department's adoption of certain travel regulations and implementation by public employees and officials would avoid a violation of subsection 6B-2-5(b)(1)?

OTHER FACTS RELIED UPON BY THE COMMISSION

The State Administrator has researched how the Federal Government and certain Corporations manage and insure that employees who travel on official business and receive associated benefits use them for later business travel. The Administrator found that the following occurred: the problem was ignored, accepted as a business travel perk for employees, strongly discouraged or that participation was allowed but with the clear understanding that any benefits derived from such participation in a bonus program are to be used for official business purposes on behalf of the organization.

State travel regulations are currently in the process of being reviewed and changed. The first regulation proposes: **Any charge or credit card offering bonuses, cash-back plans, rebates, or similar programs may be used to pay state business travel expenses, but the value derived from those programs for all charges relating to state business travel and reimbursed to the traveler from State appropriated or administered accounts must be applied to future state business travel.**

The second regulation proposes: Benefits derived from the participation in "frequent traveler programs" when the purchases and/or reimbursement of expenses of the products and/or services are made with State appropriated or State administrated funds must be used for future business travel on behalf of the State or the respective funding source. Any benefit derived from such participation and used for personal purposes may be a violation of law, rules or regulations of either the Federal or State government and the traveler will be held duly accountable.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that...a public official or public employee may not knowingly and 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...

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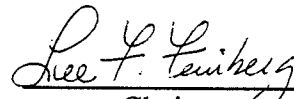
"Frequent Traveler" Programs

a. The Commission previously determined in Advisory Opinion No. 90-64 that it would be a violation of subsection 6B-2-5(b)(1) of the Act for public officials and employees to use their office or employment for their own private gain. The Commission specifically determined that it was a violation for public employees and officials to receive "bonus points" for their private benefit to be used at a later time for free accommodations and other benefits while conducting official business at the State's expense.

Therefore, consistent with the Commission's earlier ruling and after a review of subsection 6B-2-5(b)(1) it is the Commission's opinion that "frequent traveler" and other award, bonus or "cash-back" programs that result in private gain to a public employee or official which are paid for by State funds (or administered by the State) while the individual is on official government business would also constitute a violation of subsection 6B-2-5(b)(1).

"Travel Regulations"

b. It is the Commission's opinion after reviewing the proposed Travel Regulations submitted by the State Administrator that such regulations would be consistent with its previous ruling in Advisory Opinion No. 90-64. The Commission notes that these regulations would result in a direct benefit for the State since all benefits derived from the bonus point and other incentive programs would be used for future State business travel and not for the private gain of the individual. Therefore, if these regulations are adopted and used by public employees and officials in determining the appropriate use of benefits derived from state travel it would not constitute a violation of subsection 6B-2-5(b)(1) of the Act.


Chairman