

ADVISORY OPINION NO. 90-132

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON AUGUST 2, 1990

GOVERNMENTAL BODY SEEKING OPINION

A State Delegate

OPINION SOUGHT

1. Whether it is a violation of the Act for a State Delegate to utilize bonus points for personal travel when those points were accumulated while he was conducting business at the State's expense?
2. Whether it is a violation for the requestor to use the bonus points he received while conducting business at the State's expense for personal travel and then monetarily reimburse the State for the value of these bonus points?
3. Whether the requestor should set up separate accounts for receiving bonus points for both private travel and business travel?
4. Whether it is a violation of the Act for the Delegate to receive free weekly dry-cleaning and/or laundry service from the hotel where he stays while conducting business at State's expense?

OTHER FACTS RELIED UPON BY THE COMMISSION

The requestor stayed at a hotel during the 1990 State Legislative session and accumulated Priority Plus bonus points. The Hotel's daily room rate was greater than the amount for which the Delegate was reimbursed by the State. The difference in the amount reimbursed with State funds was paid by the Delegate from his personal funds.

The Delegate has previously made arrangements to use the 2,400 bonus points he received during the last Legislative session (1990) to take a personal trip with his spouse. The total points accumulated from lodging while on private business and legislative matters prior to the effective date of the Ethics Act are insufficient for the Delegate to obtain the trip without the 2400 points. The delegate does not otherwise qualify for the trip and the hotel forbids supplementing bonus points accumulated prior to October 1, 1989 with cash for the trip in lieu of using those bonus points.

The requestor would like to utilize the bonus points he acquired during the 1990 Legislative session for this trip and reimburse the State for their monetary value.

In addition, the hotel where the requestor stayed during the last Legislative session provided free dry-cleaning and laundry services to the Legislator with a maximum benefit of \$17.50 per week.

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...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...

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...any person whom the official...knows or has reason to know:

(A) Is doing or seeking to do business of any kind with 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 Section 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...The provisions of subdivision (1) of this subsection do not apply to:

(C) Unsolicited gifts of nominal value...

ADVISORY OPINION

1. The Commission would note that it has previously issued opinions on the use of bonus points and would refer the requestor to Advisory Opinion Nos.90-100 and 90-118.

The Commission would remind the Legislator that pursuant to subsection 6B-2-5(b)(1) of the Ethics Act he may not accumulate bonus points for his personal use when the charges for the purchases which earned such points are reimbursed with funds collected from State taxpayers.

2. The Commission finds that if the Legislator is able to determine a way to reimburse the State for the monetary value of the bonus points so that he may use these points for his scheduled personal travel there would not be any private gain to the legislator and therefore it would not be a violation of subsection 6B-2-5(b)(1) of the Ethics Act.

However, the Commission would note that at this time the State does not have a system in place which could accommodate this procedure or equate a monetary value with the accumulated points. Therefore, determining the bonus points' worth would be another obstacle for the Legislator in making the appropriate monetary reimbursement.

3. The Commission finds that it would not be a violation of subsection 6B-2-5(b)(1) of the Ethics Act for the Delegate to receive bonus points for monies spent on hotel rooms or other items that are not reimbursed with State funds. Therefore, the Legislator may accumulate such bonus points for his private use.

However, the responsibility would be with the public official to maintain a separate account of bonus points accumulated by private funds.

4. The Legislator received free dry-cleaning and laundry services (up to \$17.50 per week) from the Hotel while on official State business. This is a benefit which is ordinarily and logically considered **part and parcel** of the room package sold by the hotel to all Legislators. Comparable services are available to all State officials and employees when performing governmental duties during the Legislative sessions.

It is not a violation of subsection 6B-2-5(b)(1) for the Delegate to accept the dry-cleaning benefit while on official State business. These discounts are extended to him as a member of a class of government officials who receive the same benefit. It is the Commission's intent only to prohibit a public official from receiving a private benefit "because" of or as "a result of" intentionally and knowingly using his public position. Therefore, it is the Commission's opinion that this does not constitute a prohibited use of public office for private gain.


Chairman