

ADVISORY OPINION NO. 90-143
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON AUGUST 2, 1990

GOVERNMENTAL BODY SEEKING OPINION

Deputy Secretary of a State Department

OPINION SOUGHT

Whether it is a violation of the Act for a supervisor of a State Department to attend a course and receive lodging and meals at a Company's expense?

OTHER FACTS RELIED UPON BY THE COMMISSION

A computer company is offering a two-day expense paid trip for its customers to attend a classroom course in understanding and managing the human aspects of change. The public employee would receive free hotel accommodations and meals, as well as the opportunity to participate in the course without charge.

The two day course is composed of lectures, informal discussions and workshops to help the customer executives and the marketing organizations better understand and manage the human aspects of change. A state-of-the-art information processing system requires more than just buying and installing the hardware and software. The more the managers know about the human aspects of change, the more effectively they will manage the technical and business aspects of change.

The objectives of the course include a range of strategies and tactics for introducing and managing change and to help the executive gain greater insight into the change process, including the tools and techniques required to manage it effectively.

Some of the topics included in the two day course are: Effective and Ineffective Sponsorship, Synergy, Communication Styles, Dynamics of Resistance and Commitment to Change.

This employee is responsible for the installation of and employee training on the Company's computer system within the State Department and was involved in the configuration of the Company's computer system.

This system creates a significant change within the State Department involving new capabilities and changing the methods traditionally used by many of the employees to perform their jobs.

Although the supervisor will personally benefit from attending the course and receiving free meals and accommodations, the long term benefit will go to the Department and enhancement of other State Employees.

The Department states it would be interested in having the employee attend this course even if the course, accommodations and meals were not free. If the employee is precluded by the ethics law from receiving these items from the Company at no cost, it is the State Department, not the employee, who will be required to pay for them.

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.

The performance of usual and customary duties associated with the office or position...does not constitute the use of prestige or office for private gain.

West Virginia Code Section 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;...

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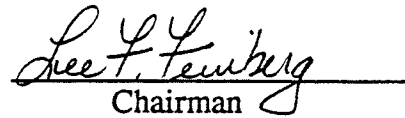
Gifts

The computer company sponsoring the course is doing business with the supervisor's state agency. Therefore, if the items received as a result of this trip were gifts it would be a violation of subsection 6B-2-5(c)(1). Although the Commission recognizes that as a result of this trip the employee will be attending a course at no charge, receiving free meals and lodging at the expense of a company the State is doing business with, it considers these benefits to primarily inure to the State and not to be a "gift" to the individual in violation of subsection 6B-2-5(c).

Private Gain

It is also the Commission's opinion that the two day course is part of the employee's training and education and would not be considered receipt of private gain. As noted in subsection 6B-2-5(b)(1) the performance of usual and customary duties associated with the public employee's office or position without compensation does not constitute the employee's improper use of his or her prestige or office for private gain.

Therefore, it would not be a violation of subsections 6B-2-5(b)(1) or 6B-2-5(c)(1) of the Ethics Act for the employee to accept an expense paid trip from a company to attend a course to aid in the understanding and management of the human aspects of change that would primarily benefit the State in the implementation of the new computer system.


Chairman