

ADVISORY OPINION NO. 91-09

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON FEBRUARY 7, 1991

GOVERNMENTAL BODY SEEKING OPINION

A Public Employee

OPINION SOUGHT

Whether it is a violation of the Ethics Act for the Executive Director of a non-profit Organization to accept a monetary bonus funded by membership dues, when he is a full-time public employee of a State Division?

FACTS RELIED UPON BY THE COMMISSION

The non-profit Organization is comprised of medical providers and independent businesses within the State. The Organization's membership is interested in the development of worksite wellness programs in their own businesses and throughout the State.

The Organization's Board of Directors passed a motion to give the Executive Director a monetary bonus of \$500, which would be funded by annual membership dues.

The Executive Director is employed by a State Division which is a member of the Organization. Although neither the Organization nor its member Companies are regulated by this State Division, members Companies may seek to contract for services from the State Division.

This State Division provides services and programs relating to physical and mental disabilities. It provides rehabilitation, counseling, education and therapy to qualified applicants.

The Executive Director is an employee of the State Division and is paid for his services as Executive Director for the Organization by the State Division. The requestor stated that the Executive Director is "on loan" from the State Division.

The requestor has stated that any activity sponsored by the Organization is not used to either encourage or discourage member companies to contract services from the State Division.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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;
- (B) Is engaged in activities which are regulated or controlled by his or her agency; or
- (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.

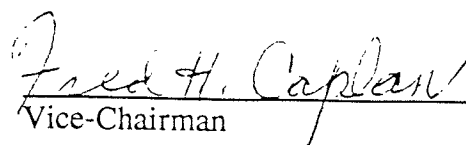
ADVISORY OPINION

Pursuant to subsection 6B-2-5(c)(1) of the Ethics Act a public employee may not accept any gift from persons seeking to conduct business with his public agency or any person who has a financial interest in the performance of the public employee's duties. The Organization does not fall within such a category since the Organization is not seeking to conduct business with the public employee's agency, is not regulated the agency nor does it have a direct financial interest which may be affected by the performance or nonperformance of the public employee's official duties.

However, as previously determined in Advisory Opinion No. 90-172, this subsection also prevents public employees from accepting gifts **indirectly** from persons in the prohibited categories listed above.

For example, the Commission considers the Organization's collection of membership dues and the use of such dues to fund a bonus for the Executive Director to be an "indirect" gift to the public employee from the member companies, which fall within one of the three prohibited categories of gift givers.

In summary, it would be a violation of subsection 6B 2 5(c)(1) of the Ethics Act for a public employee to accept a bonus from the Organization if the bonus is funded by membership dues, since the members may seek to conduct business with the public employee's State Division or have a financial interest which may be affected by the public employee's performance of his official duties.


Vice-Chairman