

ADVISORY OPINION NO. 91-55

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON AUGUST 1, 1991

GOVERNMENTAL BODY SEEKING OPINION

A State Employee

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a public employee to accept reimbursement from the plaintiff of a Federal law suit for expenses incurred as a result of the cancellation and rescheduling of her vacation so that she may appear and testify at the trial?

OTHER FACTS RELIED UPON BY THE COMMISSION

The requestor is employed by a State Division as an Inspector. Because of her duties with the State Division she is involved in several enforcement actions.

The requestor is scheduled to appear during a Federal lawsuit to provide testimony for the plaintiff's case. Although the requestor's State Division is not a party to this action, the testimony is based on knowledge acquired directly from the performance of her official duties and providing such testimony is considered part of her employment responsibilities.

This case has been ongoing for over a year. Recently, the judge set a trial date which falls within the requestor's vacation. Prior to this action, the requestor scheduled her vacation and made the appropriate reservations. The requestor has been forced to reschedule her vacation and exchange plane tickets and tour packets at an additional cost of \$225.

The plaintiff in the law suit would like to compensate the requestor for the added expense she will incur by delaying her vacation. This compensation would cover the requestor's additional expenses incurred due to the cancellation and rescheduling of her vacation.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

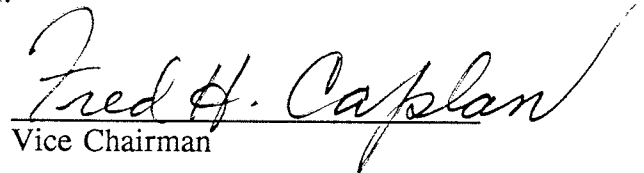
West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that...a public employee may not knowingly and intentionally use ...her office or the prestige of...her office for...her own private gain or that of another person...

ADVISORY OPINION

The Commission determined in Advisory Opinion #90-02 that the use of general knowledge and experience gained through an employment position would not be considered a use of public office for private gain as meant by subsection 6B-2-5(b)(1) of the Ethics Act. In this instance the public employee would be testifying about results of an inspection which was conducted on State time by State personnel and providing such testimony would be considered part of her public employment responsibilities.

However, the compensation offered to the requestor would be for the added expense she will incur by canceling and rescheduling her vacation. These funds would cover the requestor's additional expenses incurred and not her appearance and testimony at the trial.

Therefore, it would not be a violation of subsection 6B-2-5(b)(1) of the Ethics Act for a public employee to accept reimbursement from the plaintiff of a Federal law suit for additional expenses incurred solely as a result of testimony at the trial.


Vice Chairman