

ADVISORY OPINION NO. 95-51
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON JANUARY 4, 1996

PUBLIC SERVANT SEEKING OPINION

A State Employee

OPINION SOUGHT

Is it a violation of the Ethics Act for a State Employee to accept a prize given at a conference?

FACTS RELIED UPON BY THE COMMISSION

The requester is employed as an Engineering Technician with a State Department. Part of her job responsibilities pertain to the quality assurance of products and materials used for projects in the State.

The requester attended a conference sponsored by a Council which is an international association of individuals involved with protective coatings for industrial facilities and structures. The membership of the Council consists of both governmental agencies and private companies. Its private sector members include consultants, manufacturers and contractors.

Although the conference required a registration fee, the requester's fee was covered as part of the benefits of her membership in the Council. Her Council membership fee is paid for by her State Agency employer. This same State Agency also paid for the travel, meals and lodging expenses associated with attendance at the conference.

Along with the registration packet for the conference, everyone who attended received special tickets to qualify for prize drawings. The purpose of the drawing was to promote attendance at the conference exhibit hall. The Council charges exhibitors for the right to set up displays during the conference. In prior years Council representatives noted that attendance at the exhibit hall was dropping. To increase attendance at the exhibitors' displays the Council instituted a prize drawing which required winners to attend in order to be eligible to receive a prize. The requester's name was drawn for the grand prize -- a four-day Caribbean cruise for two including round trip air transportation to Florida.

The round trip air fare portion of the prize was donated to the Council by its travel agency. The cruise portion of the prize was purchased by the Council with conference revenues. These revenues included registration fees and exhibitor fees.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(c)(1) states in pertinent part that...No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or 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.

West Virginia Code 6B-2-5(c)(2) states in pertinent part that...the provisions of subdivision (1)....do not apply to:

- (A) Meals and beverages;
- (B) Ceremonial gifts or awards which have insignificant monetary value;
- (C) Unsolicited gifts of nominal value or trivial items of informational value;
- (D) Reasonable expenses for food, travel, and lodging of the official or employee for a meeting at which the official or employee participates in a panel or speaking engagement at the meeting;
- (E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;
- (F) Gifts that are purely private and personal in nature; or
- (G) Gifts from relatives by blood or marriage, or a member of the same household.

ADVISORY OPINION

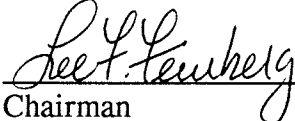
Pursuant to WV Code 6B-2-5(c)(1), public servants may not accept, directly or indirectly, a gift from a lobbyist, a person conducting or seeking to conduct any business with their agency, a person who is regulated or controlled by their agency, or any person who has a financial interest in how the public servant performs his or her public duties. Any gift from a member of one of these four classes of donors may not be accepted unless it falls within a list of exceptions contained in WV Code 6B-2-5(c)(2).

In this instance, the prize is a gift to the requester from the Council. This Council is comprised of both governmental agencies and private companies including consultants, manufacturers and contractors. A number of Council members from the private sector are conducting or seeking to conduct business with the requester's governmental agency and consequently would fall within one of the categories of prohibited gift givers.

In Advisory Opinions #91-09 and #95-03, the Commission held that a public employee may not accept a gift from an Organization comprised **entirely** of prohibited gift givers. In the former opinion the Commission considered the Organization's use of membership dues to fund a bonus specifically intended for a **particular** public employee to be an "indirect" gift to the employee from the individual Organization members.

Several factors unique to this particular case persuade the Commission that this situation is different from the facts contained in Advisory Opinion #95-20, and that accepting the prize would not violate the Ethics Act. First, the gift is being awarded to the public servant by a council whose membership is only **partially** composed of prohibited gift givers. Second, eligibility for the prize was not limited to public servants. Since there were more private sector individuals than public servants attending the conference, private individuals had an equal, if not better, chance of winning the trip than public servants. Finally, a portion of the gift, the round trip airfare, was provided by a "person" who does not fall within one of the four categories of prohibited gift donors, i.e. the Council's travel agency. The travel agency exercised no influence over the selection of the ultimate recipient of the prize. Therefore, under these specific facts, it would not be a violation of WV Code 6B-2-5(c) for the requester to accept the prize.

The Commission cautions that this opinion is limited to the facts of this case and should not be relied upon by others without prior consultation with the Commission.


Chairman