

ADVISORY OPINION NO. 99-05

Issued On February 4, 1999 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A City asks whether it may establish a program to reward its employees by using City funds to finance employees' purchases of computers for their personal use in their homes.

FACTS RELIED UPON BY THE COMMISSION

The City is considering a program to allow its employees to purchase computers through the City's purchasing agency. The program would authorize the City to advertise for bids for computers to be purchased by the City and resold to its employees. The employees would pay part of the purchase price at the time of purchase and the balance would be deducted from their pay during the ensuing year.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b)(1) provides 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...

ADVISORY OPINION

The Ethics Act prohibits public servants from using their public positions for their own private gain or the private gain of others. This principle has been applied by the Ethics Commission to a variety of situations involving savings to public servants, not generally available to the public at large.

For example, in A.O. 95-14 the Commission held that because the general public could not buy personal items under discounted State contract prices, such purchases by state employees for personal use under their agencies' state contracts would be a use of office for private gain.

In A.O. 95-52 the Commission held that an agency official could not make personal use of lodgings maintained by his agency for use by its clients at subsidized rates (\$10.60 per night), even if the lodgings were not in use at that time. The Commission noted that "members of the public who commute to and from private workplaces do not have the option of staying at subsidized housing."

In a similar vein the Commission held in A.O. 96-08 that a State agency could not give its own employees discounts on purchases made from the Agency's gift shops. The Commission observed that "when a fringe benefit which is not ordinarily available to the general public is used as a perquisite for agency employees, a distinct appearance of impropriety is created. This

appearance is based on the public's inevitable perception that public servants are using their unique position of public trust for self-enrichment."

In A.O. 96-50, the Commission considered a City's request for an opinion on using \$5,000 of City tax revenue to finance the cost of a Christmas party for its employee. It found that while the City might benefit from increased employee morale, the greater benefit of the event would go to the employees and ruled that it would be a prohibited use of office for private gain.

Finally, in A.O. 97-28, the Commission ruled that it would be a prohibited use of public office for private gain for an agency to allow its employees to make personal long distance phone calls on agency phones, even if the employees reimbursed the agency for its cost of the calls placed. Cost savings to agency employees from the use of agency phone lines at reduced agency rates constituted private gain, not available to the public.

The Commission believes that these earlier opinions and the considerations upon which they were based require a finding in this case that the proposed program, to use City funds to make the acquisition of computers less costly to its employees, would be a use of office for private gain. Therefore, it would be a violation for the City to implement the program.

Shaun Williams
Vice Chairman