

ADVISORY OPINION NO. 90-136
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON AUGUST 2, 1990

GOVERNMENTAL BODY SEEKING OPINION

An Executive Director and Registered Lobbyist for an Association

OPINION SOUGHT

- a. Whether it is a violation of the Act for public officials and public employees to accept meals and beverages from a lobbying Association?
- b. How should a registered lobbyist of an Association report meals and beverages provided to public officials and employees while they are attending a conference hosted by the Association?

OTHER FACTS RELIED UPON BY THE COMMISSION

An Association is hosting an annual meeting and intends to invite certain public officials, public employees and candidates for public office. The meeting is strictly a social event which provides everyone the opportunity to renew acquaintances. There is no registration fee for attending this meeting since the Association provides the lunch as well as the coffee and pastries at the registration table. The estimated per-person expenditure for the entire event would not exceed (\$10) ten dollars.

Since the requestor is a registered lobbyist, he is requesting guidance from the Commission as to how attendees, including whether their names should be reported as well as whether prorating of cost is appropriate. The cost allocated to participation by public officials will not exceed 10% of the total cost.

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 a lobbyist...

West Virginia Code Section 6B-2-5(c)(2) states in pertinent part that...Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public

employee may accept a gift described in this subdivision... The provisions of subdivision (l) of this subsection do not apply to:

(A) Meals and beverages;...

West Virginia Code Section 6B-3-4(b)(1) states in pertinent part that...each report filed by a lobbyist shall show the total amount of all expenditures for lobbying made or incurred by such lobbyist, or on behalf of such lobbyist by the lobbyist's employer, during the period covered by the report. The report shall also show subtotals segregated according to financial category, including meals and beverages...

West Virginia Code Section 6B-3-4(e) states in pertinent part that...if during the period covered by the report, the lobbyist made expenditures in the reporting categories of meals and beverages...which expenditures in any such reporting category total more than twenty-five dollars to or on behalf of any particular public official or employee the lobbyist shall report the name of the public official or employee to whom or on whose behalf the expenditures were made, the total amount of the expenditures, and the subject matter of the lobbying activity, if any. Under this subsection no portion of the amount of an expenditure for a dinner, party or other function sponsored by a lobbyist or a lobbyist's employer need be attributed to or counted toward the reporting amount of twenty-five dollars for a particular public official or employee who attends such function if the sponsor has invited to the function all the members of (1) the Legislature, (2) either house of the Legislature, (3) a standing or select committee of either house, or (4) a joint committee of the two houses of the Legislature. However, the amount spent for such function shall be added to other expenditures for the purpose of determining the total amount of expenditures reported under subsection (b) of this section.

ADVISORY OPINION

Meals and Beverages

a. The Commission finds that the Ethics Act poses no bar to the Association's guests accepting the hospitality described by the requestor. Subsection 6B-2-5(c)(2) of the Act specifically permits public officials and employees to accept meals and beverages from lobbyists.

Lobbyist Reporting

b. The lobbyist need only report a public official's or employee's name if the aggregate

expenditure exceeds \$25 for that particular individual in one of several categories for a reporting period. The requestor states that the total expenditures for this meeting per person would not exceed \$10 in the meals and beverages category. Therefore, the lobbyist would not need to include the public official's or employee's name on the lobbyist report unless the aggregate expenditures for that person exceeds \$25 during the calendar year 1990.

It is necessary for the lobbyist to keep a specific record identifying attendees who are public officials or employees in order to comply with the last sentence in subsection 6B-3-4(e). This provision requires the lobbyist to keep records of all expenditures made on behalf of the association for the purpose of determining whether the total amount spent on a particular public official or employee exceeds \$25 for the reporting period. The Association could use a sign-in sheet or other registration form for public officials and public employees to identify such attendees at the meeting.

The Commission would remind the lobbyist that the Lobbyist Activity Report for the 1990 calendar year is to be filed by January 14, 1991. It would be permissible to prorate on the report the total cost of the event to those public officials and employees attending.

However, if the Association invited all members of one of the four categories listed in subsection 6B-3-4(e) which includes: (1) the Legislature, (2) either house of the Legislature, (3) a standing or select committee of either house, or (4) a joint committee of the two houses of the Legislature, it **would not** be necessary to attribute expenditures over \$25 or count these expenses toward the \$25 threshold required to name a particular public official or employee as a recipient.

Chairman