

ADVISORY OPINION NO. #91-47

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 6, 1991

GOVERNMENTAL BODY SEEKING OPINION

President of a Chamber of Commerce

OPINION SOUGHT

Whether an exemption from subsection 6B-2-5(c) of the Ethics Act may be granted to Legislators in order that a Chamber of Commerce may pay Legislators' costs of participating in a golf tournament?

FACTS RELIED UPON BY THE COMMISSION

A Legislative interim meeting with approximately 70 members of the Legislature in attendance, is scheduled for July 14-16. The Chamber of Commerce is sponsoring a golf tournament immediately following the interim meeting. All Legislators who have been officially designated to serve on interim study committees will be invited to the event.

The Chamber of Commerce would like to pay the costs incurred by the legislators who choose to participate in the golfing event and has requested that the Ethics Commission grant an exemption to allow them to do so. The president of the Chamber of Commerce has stated that the total cost is approximately \$39.00 per participant.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(c)(1) states in pertinent part that...No official...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 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...may accept a gift described in this subdivision... The provisions of subdivision (1) of this subsection do not apply to:

- (C) Unsolicited gifts of nominal value or trivial items of informational value;...

ADVISORY OPINION

West Virginia Code 6B-2-5(c)(1) provides that a public official may not accept any gift, directly or indirectly, from a lobbyist or from any person who may have a financial interest which may be substantially and materially affected by the performance or nonperformance of his official duties. It is clear that the Chamber of Commerce would fall within these prohibited categories.

Subsection 6B-2-5(c)(2) allows a person who is a public official to accept certain gifts and are afforded the presumption that the receipt of such gifts does not impair the impartiality and independent judgement of the person. A specifically named gift which may be accepted is an unsolicited gift of nominal value. The Commission has determined that in order for a gift to be classified as nominal, the value of such gift must be less than \$20.

As previously noted the president of the Chamber of Commerce has stated that the approximate value of the golfing fee is \$39. Therefore, it would not be considered a gift of nominal value and acceptance by Legislators of golfing privileges (who otherwise did not have them) from a member of the prohibited category would constitute a violation of subsection 6B-2-5(c)(1) of the Ethics Act.

Further, the Chamber of Commerce has requested that the Ethics Commission grant the Legislators who wish to participate in the golf tournament an exemption from the prohibitions established in subsection 6B-2-5(c)(1). The original Ethics Act which was effective July 1, 1989 provided that the Ethics Commission by regulation could define further exemptions from the gift section as necessary or appropriate. However, the Ethics Act which was amended on June 9, 1990 no longer contains such exemption mechanism.

Chairman