

ADVISORY OPINION NO. #91-73

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON OCTOBER 3, 1991

GOVERNMENTAL BODY SEEKING OPINION

The Chairman of a Council

OPINION SOUGHT

Whether the Ethics Act requires a Council comprised of trade associations and businesses to register and report expenditures made on behalf of Legislators?

FACTS RELIED UPON BY THE COMMISSION

A West Virginia Council is an unincorporated business league comprised of trade associations and businesses.

The Council sponsors an Annual Legislative Reception, an annual meeting, and other meetings to which Legislators and other Government Officials are invited. In some instances there will be a reception and dinner.

On occasion the Council employs consultants to conduct research on various issues and voting records of Legislators. This information is distributed to the Legislators and the general public.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-3-1(7)(A) states in pertinent part that...a "lobbyist" means a person who, through communication with a government officer or employee, promotes, advocates or opposes or otherwise attempts to influence:

- (i) The passage or defeat or the executive approval or veto of any legislation which may be considered by the legislature...,
- (ii) The adoption or rejection of any rule, regulation, legislative rule, standard, rate, fee or other delegated legislative or quasi-legislative action to be taken or withheld by any executive Department.

West Virginia Code Section 6B-1-3 states in pertinent part that a "Public Official" means any person who is elected and who is responsible for the making of policy or takes official action which is either ministerial or nonministerial, or both, with respect to (i) contracting for, or procurement of, goods or services, (ii) administering or monitoring grants or subsidies, (iii) planning or zoning, (iv) inspecting, licensing, regulating or auditing any person, or (v) any other

activity where the official action has an economic impact of greater than a **de minimis** nature on the interest or interests of any person.

West Virginia Code Section 6B-3-2 states in pertinent part that...before engaging in any lobbying activity...a lobbyist shall register with the Ethics Commission by filing a lobbyist registration statement...

West Virginia Code Section 6B-3-1(7)(A)(iii) states in pertinent part that...persons who lobby **without compensation or other consideration** for acting as a lobbyist, when such persons make no expenditures for or on behalf of any government officer or employee in connection with such lobbying, are exempt from registering with the Ethics Commission.

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, living accommodations, travel, gifts or other expenditures, other than for those expenditures governed by subsection (f) of this section, 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 (e), 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 reported under subsection (b) of the section.

ADVISORY OPINION

The Commission finds that business, labor and other associations invite members of the Legislature to receptions, dinners and other similar events as a result of a widely held belief that their attendance will further the legislative agenda of the sponsoring organizations. Since the Council's hospitality to the Legislators is, in the final analysis, intended to influence legislation, the event is a "lobbying activity".

Therefore, the appropriate Council representative must register with the Ethics Commission and report all expenditures by the Council on behalf of invited legislative guests since such functions are lobbying activities.

The Commission notes that a lobbyist need only report a public official's or public employee's name if the aggregate expenditure exceeds \$25 for that particular individual in one of several categories for a reporting period. Therefore, the appropriate Council representative would not need to include the names of public officials or public employees on the lobbyist report unless the aggregate expenditures for that person exceeds \$25 during the calendar year 1991.

It is necessary for the Council representative 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 records of all expenditures made on behalf of the Council for the purpose of determining whether the total amount spent on a particular public official or employee exceeds \$25 for the reporting period. The Council could use a sign-in sheet or other registration form for

public officials and public employees to identify such attendees at the meeting.

However, if the Council 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