

ADVISORY OPINION NO. 90-182
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON NOVEMBER 1, 1990

GOVERNMENTAL BODY SEEKING OPINION

A State Senator

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a State Senator to accept a bouquet of flowers from a lobbyist?

OTHER FACTS RELIED UPON BY THE COMMISSION

The requestor states that most legislators have received flowers from lobbyists at various times during the legislative session or following elections. The requestor believes that flowers are the best way to say "thank you" or "well done" without establishing an obligation. Also, the requestor states that she has never received an arrangement from a lobbyist while she was in the midst of considering an issue, but only after the legislative issue had been decided.

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;

(F) Gifts that are purely private and personal in nature;...

ADVISORY OPINION

Pursuant to subsection 6B-2-5(c)(1) of the Ethics Act a public official may not accept any gift from a lobbyist. However, to be considered in conjunction with that provision is subsection 6B-2-5(c)(2) which establishes certain exemptions from that prohibition.

Unsolicited gifts of nominal value and gifts which are purely private and personal in nature are included in the exemption categories. The Commission has determined that for a gift to qualify as nominal and its acceptance by a public official be allowed it must have a monetary value of \$20 or less.

The Commission has determined that the monetary value of a bouquet of flowers at today's market value would exceed the proscribed limitation of \$20. Therefore, it would be a violation of subsection 6B-2-5(c)(1) of the Ethics Act for a State Senator to accept a bouquet of flowers from a lobbyist, if the monetary value of such flowers is more than \$20.

However, it is the Commission's opinion that in this specific situation it would not be a violation of subsection 6B-2-5(c)(1) of the Ethics Act for a State Senator to accept a bouquet of flowers from a lobbyist, since it would be considered personal in nature. The flower arrangement was sent to the legislator because of a social relationship and not to influence her vote on a particular matter.

Chairman