

ADVISORY OPINION NO. 96-04

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 7, 1996

PUBLIC SERVANT SEEKING OPINION

Public officials

OPINION SOUGHT

Is it a violation of the Ethics Act for public servants participating in an intergovernmental conference to attend conference social functions and accept conference souvenir gifts?

Is it a violation of the Ethics Act for the legislative leadership to encourage funding for an intergovernmental conference hosted by the State of West Virginia?

FACTS RELIED UPON BY THE COMMISSION

West Virginia belongs to a bipartisan regional state Conference which is in turn affiliated with a national Council of all state governments. The purpose of these organizations is to provide information and other resources on public policy issues to state governments. The Conference holds an annual meeting and responsibility for serving as host of the meeting is rotated among its members every fourteen years. It will be West Virginia's turn to host the annual meeting next year.

Each year the Conference enters into a memorandum of understanding with the host state regarding the annual meeting. Pursuant to this understanding, the host state is responsible for local logistics regarding registration, transportation, media relations, hospitality and emergency services. In the area of hospitality the host state usually arranges three social functions: the opening reception, a family night, and the State Dinner. Those attending the meeting often receive souvenirs of the meeting reflecting the host state's economy and culture.

The major social events and souvenirs noted above are traditionally underwritten, at least in part, by contributions to the annual meeting from corporations, trade associations, and other private donors. Those contributions, combined with the host state's own budget appropriation and its share of the registration fees, cover the overall cost of the host state's responsibilities.

It is the tradition and custom for legislative leaders, as representatives of the host state, to send form letters to potential supporters announcing and explaining the annual meeting and encouraging support. Funds raised through this effort are deposited in an account established and maintained by the Council, which acts as fiscal agent for the annual meeting and pays all vendors as bills are presented. The Council provides the host state with its tax identification number and contributions to the annual meeting are tax deductible in accordance with IRS regulations.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b)(1) states 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. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

West Virginia Code 6B-2-5(c)(1) states in pertinent part that...a public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: **Provided**, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position as such is subordinate to the soliciting official or employee: **Provided, however**, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. No official or employee 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 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, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

- (A) Meals and beverages;
- (B) Ceremonial gifts or awards which have insignificant monetary value;
- (C) Unsolicited gifts of nominal value or trivial items of informational value;
- (D) Reasonable expenses for food, travel, and lodging of the official or employee for a meeting at which the official or employee participates in a panel or speaking engagement at the meeting;
- (E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;

...

ADVISORY OPINION

Acceptance

The Ethics Act prohibits public servants from accepting, with certain exceptions, gifts from interested persons - i.e., lobbyist, regulated persons, vendors, and those who have financial interests that would be affected by the public servant's job performance in a manner different from the public at large. However, the Act specifically provides that meals and beverages, without regard to value, and unsolicited individual gifts of nominal value (worth \$25 or less) are exempt from the prohibition against accepting gifts from interested persons. The Commission is confident that most, if not all of the social events and souvenirs that those attending the meeting would receive will fall within these exceptions and may be accepted.

The request did not specify particular gifts or items that might not fall within the exceptions noted above. For this reason the requesters are encouraged to consult with Commission staff and, if necessary, obtain advisory opinions on any unique questions that may arise during the meeting's planning stage over the next year. This opinion may not be construed to grant blanket immunity to the acceptance of anything proffered to those West Virginia public servants attending the meeting since the Ethics Act will continue to apply to their actions.

Private Gain

The Ethics Act, at WV Code 6B-2-5(b)(1), prohibits public servants in this state from using their positions for their own private gain or the private gain of another. However this statute exempts "the performance of usual and customary duties associated with the office or position or the advancement of public policy goals..." provided such activities are undertaken without compensation.

The focus of the annual meeting is a sharing of information between member states on current matters of common interest in public policy. The Commission finds that the rotating responsibility for hosting the Conference's annual meeting requires the performance of usual and customary duties associated with leadership positions in the Legislature. The meeting will also have a positive effect on the local economy and provide an opportunity to promote both the local area and the State as a whole for possible expansion of business and tourism. All of these activities are well within the customary duties associated with the requesters.

Therefore it would not be a misuse of a public position for private gain if the requesters carried out the usual and customary responsibilities of a host state by tending to local logistics, registration, transportation, media relations, hospitality and emergency services.

Solicitation

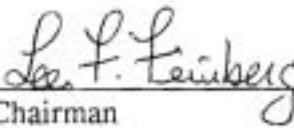
West Virginia Code 6B-2-5(c) prohibits public servants from soliciting gifts unless they are for a charitable purpose. The purpose of this provision is to prevent public servants from abusing their office to enrich themselves by coercing individuals into giving them gifts. In Advisory Opinion 90-175 the Commission defined "solicitation" as "seeking to obtain something by direct persuasion or by petitioning persistently." See also A.O. 91-85.

In this case the requesters plan to send out a mass mailing of a form letter outlining generally the annual meeting and encouraging voluntary participation in the event as a means of both showcasing the local and state economy and culture as well as assisting state governments in sharing expertise and information on current public policy issues they all face. A majority of those attending this meeting will be individuals from other states who are not subject to the provisions of the Ethics Act.

The Commission has determined that providing a mass mailing outlining the existence of the annual meeting to traditional supporters and others who might have an interest in supporting West Virginia's turn at hosting this event would not be considered the type of solicitation restricted by the Ethics Act. This determination is contingent upon the Council continuing to serve as fiscal agent for all funds associated with the meeting.

This opinion does not endorse direct personal solicitation or "arm twisting" to gain support for the annual meeting, but rather is limited to written solicitations of public support by the Legislative leadership. While it is clear that some limited degree of personal contact with donors may be involved in accepting donations generated by the written solicitations, care must be taken to avoid the appearance of a direct personal solicitation or any suggestion of a quid pro quo for donations.

It is the intention of the Commission to only allow the chief representatives of all three branches of government to undertake the activities necessary as part of their membership in interstate governmental associations. However, because of the potential for any particular activity to run afoul of the constraints of the Ethics Act, this opinion is limited to the facts presented and should not be relied upon by any other public official or employee without further consultation with the Commission staff. The requesters may rely upon this opinion only for the activities outlined herein for this specific meeting.


Chairman