

ADVISORY OPINION NO. 98-18

Issued On September 3, 1998 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A County Public Service District asks if it is a violation for a vendor to pay the expenses of certain agency personnel to travel to and attend a vendor's product related seminar.

FACTS RELIED UPON BY THE COMMISSION

The Public Service District (PSD) currently uses equipment supplied by a Vendor, which also supplies equipment of the type the PSD will require for treatment plant and sewer line projects now being planned. Equipment purchases by the PSD will be made by competitive bidding process.

The Vendor provides, without cost, a one day seminar on wastewater treatment equipment for potential and existing customers. It has offered to reimburse the PSD for the travel expenses of any of its personnel who attend. The PSD believes that certain of its personnel should attend and asks whether it may accept Vendor reimbursement for the travel expenses of two key maintenance personnel, the general manager and assistant manager and one member of the PSD's Board.

STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(b)(1) states in pertinent part that...a public official...may not knowingly and intentionally use his...office or the prestige of his...office for his...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...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.

ADVISORY OPINION

In previous Advisory Opinions the Ethics Commission has approved the practice of government agencies permitting vendors to pay the expenses of agency personnel when they attend events designed to enhance their job related skills or knowledge. The approval is limited to reasonable expenditures for travel, lodging, and meals incidental to attending the event.

This practice does not violate the Ethics Act's prohibition against the acceptance of gifts because the employing agency and the public benefit significantly from the increase in the traveler's job related skills or knowledge. Although the individual traveler benefits, it is not the type of benefit which violates the Ethics Act.

There is no improper use of office for private gain where there is an overriding public benefit to such travel and the true recipient is the governmental agency, not the individual agency traveler. The incidental benefit to the individual is legitimized by the overriding public benefit.

To assist public officials and public employees in determining whether accepting financing for a trip from someone outside the agency is acceptable, the Commission established the following guidelines:

1. The trip must be necessary to fulfill an existing agency need.

The first consideration must be whether the trip will significantly enhance the traveler's occupational skill or knowledge or provide important information needed by the agency to meet its official mandate. Public employees and officials who have been offered trips should consult with their supervisor or agency head for guidance in making this judgment.

If the trip was conceived and scheduled by the agency prior to and independent of the offer of payment from a third party, then it is likely that the trip is necessary to the agency's official activities.

The skill, knowledge or information to be gained from the trip should meet a clear **immediate** need of the agency. The information should be of immediate value to current or planned activities of the agency rather than theoretically valuable to activities that are neither current nor planned for the foreseeable future.

2. The trip must be appropriate for the proposed traveler.

A trip is appropriate for the traveler who needs and will use the information or job skill enhancement or who is the agency employee most suitable to acquire and transfer the information or skills to other appropriate agency personnel.

3. The site of the proposed trip must be appropriate.

Central to this inquiry is a consideration of whether the trip is a reasonable means of meeting the agency's needs. For example, it would not be reasonable for the agency to send its personnel to an out of state resort to obtain information that is readily available locally. Similarly, it would not be reasonable to permit an interested person to provide agency personnel such a trip.

4. The trip must offer a reasonable return on the time spent.

The trip should represent a reasonable investment of the traveler's time when weighed against the information acquired or the degree of improvement in job skills. A five day trip comprised of two travel days and three days of light class work would not be a reasonable way to acquire information or skills which could be adequately presented in a one day seminar.

This consideration also applies to part-time officials and employees who might travel outside official work hours. If they accept inappropriate free trips offered because of their public positions they may violate the Ethics Act's prohibition against using the prestige of office for private gain.

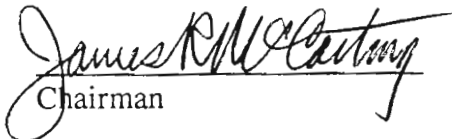
5. The benefit to the agency must be significantly greater than the incidental benefit to the traveler.

If the incidental personal benefit to the traveler outweighs the benefit to the agency, then the trip is in reality a gift to the traveler and not the agency. In such a case the trip should not be accepted because it is a gift to the individual of more than nominal value.

A safe rule would be to limit acceptance to only expenses that the agency itself would accept for reimbursement, i.e. reasonable food, travel, lodging, and attendance fees. First class airfares, deluxe accommodations, and other perks not associated with the basic travel, meals, and lodging required by the trip would increase the incidental benefit to the traveler.

The foregoing guidelines provide the requestor and other public servants a means of judging whether a specific offer of a trip is acceptable under the Ethics Act. Based on the information provided to the Ethics Commission the proposed trip would appear to be acceptable under the Act.

Care should always be taken that no gift is tendered or accepted under facts or circumstances which could impair the impartiality and independent judgment of public servants in a particular governmental agency or give the appearance of impropriety or the creation of a quid pro quo.


Chairman