

ADVISORY OPINION NO. 99-14

Issued On July 8, 1999 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Coach for a State institution of higher education** asks whether he may accept a "bonus" offered him by the school's athletic boosters organization.

FACTS RELIED UPON BY THE COMMISSION

The school's athletic boosters club is a not for profit association which solicits financial support for the school's athletic program. The boosters club has offered the Coach a \$5,000 bonus as a gift in recognition of his five years service to the school's athletic program. The Coach asks whether he may, consistent with the provisions of the Ethics Act, accept the bonus.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(c)(1) provides 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.

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The Ethics Act provides that public servants may not accept gifts from interested persons, unless the gift fits into one of several specified exemptions, such as meals and beverages and gifts of nominal value. The first step in deciding the Coach's question is to decide whether the boosters club is included in the list of those interested persons whose gifts are subject to regulation.

The Act's rule regulating the acceptance of gifts, provides that public servants may not accept gifts from a person, association, club or other group, that:

- (1) is a lobbyist
- (2) is doing or seeking to do business of any kind with his or her agency
- (3) is engaged in activities which are regulated or controlled by his or her agency, or
- (4) 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.

This rule is a recognition that gifts from interested persons to public servants may give the appearance of an effort to buy, or to reward, preferential treatment. The rule is intended to regulate the nature and magnitude of gifts to those public servants whose official influence may benefit the financial interests of those who give the gifts. It is an effort not only to prevent misconduct, but to guide public servants away from situations which may suggest or give the appearance of impropriety.

Clearly boosters associations created to provide support to the State's public schools and institutions of higher education are not included among the first three of the classes identified in the rule, but it is not clear whether they falls into the last category - and that is the focus of this advisory opinion.

Fund-raising is a principal activity of boosters associations and fund-raising may be significantly influenced the performance of a school's athletic program guided by its coaches. However, the Commission believes that neither such associations nor their members have the type of private financial interests with which the rule is concerned. Gifts to coaches offer no potential for private financial benefit to the association or its members.

The Commission finds that boosters associations are not among the several classes of interested persons whose gifts to public servants are subject to restriction. Therefore, as long as the bonus does not come from public funds and involves no quid pro quo, it would not be a violation for the Coach to accept the boosters club's gift of the bonus.



Chairman