

COPY

ADVISORY OPINION NO. 2000-26

Issued On October 5, 2000 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **City Council Member** asks whether the city can accept a privately-owned utility company's offer to pay for a special election.

FACTS RELIED UPON BY THE COMMISSION

A privately-owned public utility has made an offer to purchase a city's water system. Such sale must be approved by a special election of the city's voters. The utility has further made an unsolicited offer to pay the cost of the election, without regard to the outcome of the vote. The utility is not seeking any concession or quid pro quo from the city, other than holding the election.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(c)(1) provides in pertinent part:

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 agency;
- (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.

W. Va. Code § 6B-2-5(b)(1) provides 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.

ADVISORY OPINION

In A.O. 90-176, the Commission determined that the Ethics Act prohibition against public officials and employees accepting gifts "does not integrate governmental entities into the general prohibitions." Thus, the Commission ruled that it would not be a violation of the Ethics Act for a County to accept contributions from local businesses to be used to provide additional training to deputies employed by the County Sheriff's Department. This same approach was followed by the Commission in A.O. 92-06 where a County Sheriff's Department was permitted to accept unsolicited donations to purchase a drug detection dog.

In this situation, the gift is being offered to the municipal government and not to any Council Member individually. Therefore, no provision in the Ethics Act prohibits the City Council from accepting reimbursement, should a majority determine that accepting the offer to pay the costs of the special election is in the public interest.



Chairman