

COPY

ADVISORY OPINION NO. 2001-16

Issued On May 3, 2001 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Commission** asks if certain of its personnel may travel to Japan as the guests of the corporation which is the county's principal private sector employer.

FACTS RELIED UPON BY THE COMMISSION

The County Commission has worked with the corporation to help corporate personnel deal with the cultural differences confronting them in the County. With the goal of enhancing cultural accommodation, the corporation has invited the Commissioners, the County Attorney and the County Administrator to travel as its guests for a week long visit to its home offices in Japan, where they could view the company's operations and experience the Japanese culture.

The Commission asks if it may, consistent with the provisions of the Ethics Act, accept the corporation's gracious offer.

WV CODE PROVISIONS RELIED UPON BY COMMISSION

WV 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 of more than nominal value [\$25 or less ] from interested persons. Interested persons include lobbyists and those who do business with, are regulated by, or are otherwise financially interested in the activities of the public servant's agency. The Commission finds that the corporation is an interested person in regard to County Commission personnel involved in this request for an advisory opinion.

The Act's prohibition against accepting gifts applies to individual public servants and not to public agencies. An agency may accept a gift from an interested person - even though it is of more than nominal value. Travel which results in more benefit to the agency than the public servant will be considered "official" travel and will be treated as a gift to the agency. The personal benefit the individual traveler receives is not objectionable - it is legitimized by the overriding public benefit to the agency.

In Advisory Opinion 92-35 the Ethics Commission ruled that travel which resulted in a significant increase in the traveler's job related skill or knowledge could be considered "official" travel and established the following criteria for determining whether travel would be considered "official" travel:

**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 skill 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.**

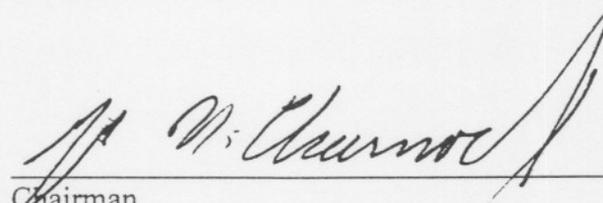
If the incidental personal benefit to the traveler outweighs the benefit to the agency, then the trip is in reality a gift to the traveler and not the agency. In such a case the trip should not be accepted because it is a gift to the individual of more than nominal value.

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 proposed trip offers the Commissioners and their staff personal benefits of more than nominal value and may not be accepted, unless the travel will result in overriding public benefit to the agency. If the agency's benefit from the travel is significantly greater than the personal benefit to the travelers, the gift may be accepted and the incidental private or personal benefit to the travelers is legitimized.

It is clear that the County Commission had no existing plan to send its personnel to Japan to enhance their understanding of, or sensitivity to, the cultural differences confronting the corporation's personnel. It does not appear that the County Commission would, on its own, pay the cost of such a trip, as the duration and expense of the trip are out of proportion to the benefit the agency will derive from the travelers' greater understanding of the disparities between the two cultures.

Therefore, the Commission rules that neither the County Commissioners nor their staff may accept the corporation's offer.

  
Chairman