

ADVISORY OPINION NO. 2001-19

COPY

Issued On June 7, 2001 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **State Agency** asks if it may solicit discounts from businesses which provide health related products or services for purchases by public servants participating in agency wellness programs.

FACTS RELIED UPON BY THE COMMISSION

The Agency is responsible for providing health care services to public servants. It administers a wellness program which encourages public servants to exercise, eat a healthy diet and engage in stress management techniques. This program is expected to be a significant tool in reducing the overall health care costs for the Agency's members.

The Agency is considering proposals to secure discounts for those who participate in the wellness program. If the proposals were implemented, participating public servants could "receive discounts when joining health clubs, spas or recreational facilities; or when purchasing healthy foods from farmers' markets, grocers, and restaurants offering healthy fare."

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code 6B-2-5(b)(1) provides 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

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 any person whom the official or employee knows or has reason to know:

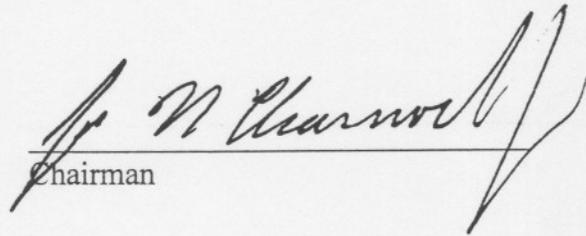
- (A) Is doing or seeking to do business of any kind with his or her agency;
- (B) Is engaged in activities which are regulated or controlled by his or her agency; or
- (C) Has financial interest which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his official duties.

ADVISORY OPINION

The Ethics Act prohibits public servants from using their public positions for their own private financial gain or the private financial gain of another person. This prohibition does not apply to this agency's efforts to implement a program which will, through the offer of discounts on relevant purchases, reduce the agency's overall health care delivery cost, even if the program results in immediate financial gain to its members.

The Ethics Act's prohibition against public servants accepting gifts applies to gifts from interested persons, such as lobbyists, regulated persons and agency vendors. It does not apply to this situation where the financial benefit to public servants is secured by the agency as a financial inducement to enhance participation in the agency's program.

It would not be a violation of the Ethics Act for the Agency to secure, or its members to accept, discounts on health related services and products which are a part of a workplace preventive health care program.


Chairman