ADVISORY OPINION NO. 2010-11

Issued On June 3, 2010 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **State Legislator** asks whether the Ethics Act prohibits him from accepting a door-prize he won at a public reception?

FACTS RELIED UPON BY THE COMMISSION

Earlier this year, a public regional authority ("Authority") hosted a reception to celebrate the creation of a new airline service to be offered by the Authority. Although the reception was open to the public, the Authority sent invitations to numerous governmental officials.

At the conclusion of the reception, the Authority conducted a door-prize drawing for two pairs of complimentary airline tickets. One set of tickets was donated by the airline company, and the other set of tickets was donated by the Authority. The drawing was open to all attendees at the reception. To participate in the drawing, individuals had to drop a business card into a box. At the end of the reception, two winners were randomly selected. The first winner received the airline-donated tickets and the second winner received the Authority-donated tickets. Based upon information provided, the drawing was conducted in a fair, impartial, and random manner. There is no allegation that the drawing was rigged or otherwise slanted toward a particular individual.

The Requester, and elected member of the State Legislature, was one of the governmental officials attending the reception. Although he believes he may have received an invitation to attend, he is not certain. However, the Authority indicated that typically all members of the Legislature are sent invitations. Notwithstanding, during the course of the reception, the Requester placed his business card into the drawing for a chance to win one of the two sets of plane tickets.

The Requester's business card was selected as the second winner. As a result, he received the two complimentary airline tickets. which had been donated by the Authority.

With respect to its donation of tickets, the Authority did not use any of its general public funds. Rather, the Convention & Visitors Bureau (CVB) provided the money to the Authority for the purpose of funding the event, including purchasing the airline tickets. As such, the Authority did not utilize restricted public funds for the prize.

The Requester inquires whether he may keep the two airline tickets.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code§ 6B-2-5(b) reads in relevant part:

> 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.

W. Va. Code§ 6B-2-5(c)(1) states in relevant 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:
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> (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 or her official duties.

However, W. Va. Code § 6B-2-5(c)(2) exempts the following items from the prohibitions of subdivision (1):

> (A) Meals and beverages;
> (B) Ceremonial gifts or awards which have insignificant monetary value
> (C) Unsolicited gifts of nominal value or trivial items of informational value;
> (D) Reasonable expenses for food, travel and lodging of the official or employee for a meeting at which the official or employee participates in a panel or has a speaking engagement;
> (E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;
> (F) Gifts that are purely private and personal in nature; or
> (G) Gifts from relatives by blood or marriage, or a member of the same household

ADVISORY OPINION

In establishing the Ethics Act, the Legislature sought to maintain the public's confidence

in the impartiality and independence of decisions and actions by public officials and employees, and to ensure that all such decisions be made free of undue influence, favoritism or threat at all levels of government. W.Va. Code § 6B-1-2(a).

In accordance with this purpose, public servants may not accept, directly or indirectly, unsolicited gifts from interested persons, unless the gift falls within one of the Act's specific exceptions. W.Va. Code§ 6B-2-5(c).

The Commission finds that the complimentary airline tickets constitute a gift to the Requester. Although provided to him for free, the tickets themselves have a value greater than $25.00, and do not fall within any of the other limited exceptions to the gift prohibitions in the Ethics Act. See W.Va. Code § 6B-2-5(c)(2). Accordingly, the complimentary airline tickets constitute a gift to the Requester subject to the prohibitions of W.Va. Code§ 6B-2-5(c)(1).

The Requester, however, inquires whether it is permissible to accept the gift since he did not receive it for merely being a public official, but rather as a door-prize while he was attending a reception open to the public.

The Commission has previously ruled that public employees may not accept a prize won through a drawing at a work-related training conference:

> Ordinarily, public servants are prohibited from accepting gifts from vendors who do business, or seek to do business, with their agency. That the requester was one of over 200 people attending the conference where the door prize was won in a bona fide random drawing, and her influence over contracting decisions may be limited, does not create an exception to the prohibition.
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> Accordingly, the Commission finds that it would violate the Ethics Act for the requester to accept this door prize from a vendor to her agency.

Advisory Opinion 2006-07; *See also* A.O. 95-20.

With respect to this reception, the Authority invited numerous State, county, local and Congressional public officials to attend. Additionally, the Authority advertised it as an event to which the general public was invited to attend free of charge. The purpose of the event was for the Authority to showcase its new service, and to celebrate the accomplishment with local governmental officials. Although the Requester is uncertain whether he received an actual invitation, the Authority believes it invited all members of the Legislature to the event. Based upon the totality of the facts, it is evident that the Requester appeared in his official capacity at the reception.

Further, the entity providing the tickets is a public agency. While the tickets may have been given to the public agency by the local CVB, the fact that the Requester, an elected public official, is receiving a gift from a public entity that he oversees, controls

and/or regulates creates a significant appearance of impropriety.

The Ethics Act's prohibition against the use of office for private gain is not limited to individuals. A public entity may not use public resources on public officials in order to obtain favorable treatment for the public entity. For example, a State Park may not offer a member of the Legislator a free round of golf or free lodging in anticipation of increased legislative appropriations to the State Park system.[1]

The Commission does not believe that the gift was an attempt to influence the Requester. Rather, the drawing was open to all individuals (public and private), and was nothing more than a nice door-prize for those in attendance. Notwithstanding, the Commission is charged with upholding the spirit and intent of the Ethics Act. The Commission finds that allowing the Requester, or any other public servant, to keep the gift under the facts presented opens a window for future malfeasance, and contradicts the clear appearance of impropriety of a having a State Legislator accept a gift from a public agency that receives funding from the Legislature.

Accordingly, the Commission hereby finds that it would be a violation of W.Va. Code §§ 6B-2-5(b) and (c) for the Requester to accept the two complimentary airline tickets which he won at the reception from the Authority.[2]

In reaching this conclusion, the Commission wishes to make clear that there may be occasions in which the acceptance of a door-prize/ raffle drawing is permissible (i.e. child's soccer team raffle; church raffle). However, given the restrictions of the Ethics Act (especially W.Va. Code § 6B-2-5(c)) acceptance of such gifts should generally be disfavored and avoided when the public servant is acting in his/her official, public capacity. In questionable situations, public servants should contact the Commission for advice prior to accepting such a gift.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code§ 6B-1-1, *et seq,* and does not purport to interpret other laws or rules. In accordance with W.Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked, or the law is changed.

/s/ R. Kemp Morton, Chairman
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[1] The Commission takes this opportunity to caution public entities that generally the expenditure of public funds for promotions targeted to public servants is impermissible. In this instance, however, the purpose of the event was to promote the new flight and was targeted to the general public.

[2] The Commission has previously held in some cases that the Requester could donate the prohibited gift to a charity. *See* Advisory Opinion 95-20. However, in this situation, regulations may prohibit the transfer of airplane tickets to another individual. Therefore, the Requester should simply return the gift.