

ADVISORY OPINION NO. 2008-06

Issued On July 10, 2008 By The WEST

VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **City Manager** asks whether a vendor, consultant or other entity with which the City does business may pay his registration fee for a golf tournament when the registration fee is in excess of the gift limit of \$25.00.

FACTS RELIED UPON BY THE COMMISSION

A City belongs to several associations whose primary mission relates to government. Each year the associations hold annual conferences. Attendees include public servants and persons from the private sector. Near the beginning or end of each conference, there is a golf tournament in which the attendees may participate, provided they pay an entrance fee.

The Requester asks if a vendor, consultant or other entity with which the City does business may pay his entrance fee. The entrance fee for one tournament is \$55.00 which covers lunch, green fee and cart. The entrance fee for the other tournament is \$75.00 which covers the green fee, cart and 2 scholarships. Presumably, the vendor or other party would pay the Requester's registration fee by registering one or more teams of 4 players for the tournament, and then asking the Requester to play on one of its teams.

CODE PROVISIONS, LEGISLATIVE RULES AND OTHER AUTHORITY RELIED UPON BY THE COMMISSION

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

[N]o 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 or her official duties.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

(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.

Title 158, Series 7 entitled "Solicitation and Receipt of Gifts and Charitable Contributions by Public Employees and Officials" reads in relevant part:

4.1 For purposes of the Ethics Act, W.Va. Code § 6B-2-5(c)(2)(C), a nominal gift is any gift with a monetary value of twenty-five dollars (\$25.00) or less...The total dollar value accepted from any one source may not exceed twenty-five (\$25.00) in one calendar year.

9.3. A public official or employee may not accept a ticket to a sporting event when the value of the ticket exceeds \$25.00 unless the public official or employee has an official or ceremonial duty to perform at the sporting event. A ceremonial role is any duty performed before members of the public who are attending the sporting event. If the public official does not have a ceremonial duty, then the value of a ticket or tickets received from an interested party for a sporting event or events may not exceed \$25.00 in one calendar year.

The Ethics Commission has formally issued "Gift Guidelines." The guidelines read in relevant part:

There is no limitation on the value of a ticket to a charitable, cultural or political event. The test is whether public officials are customarily invited.

An example would be a concert (a cultural event) given annually by a local community band. If the local community band or a person or company sponsoring the event customarily provides tickets to elected or appointed officials, then you may accept. This rule does not apply to sporting events.

ADVISORY OPINION

The Ethics Act and the related Legislative Rule prohibit public servants from receiving a gift in excess of \$25.00 from an interested party in a calendar year. The \$25.00 limitation does not apply to meals and beverages if the person providing the meals and beverages is present. A vendor, consultant or other entity with which a City does business is an interested party. Hence, the Ethics Commission must examine whether the Requester may accept an invitation from a vendor to play in the golf tournaments when the entry fee would be paid by the vendor.

The entry fee for one tournament is \$55.00 which covers the lunch, green fee and cart. As the lunch is part of the flat-rate tournament fee, the Ethics Commission finds that the meals and beverages exception does not apply. Instead, the \$25.00 gift limit applies.

The Commission and Legislature, through approval of the Commission's Legislative Rule, have expressly established a \$25.00 gift limit and expressly set forth that a public servant may not accept a ticket in excess of \$25.00 to a sporting event unless he or she has a ceremonial role. An example of a ceremonial role would be a professional baseball team asking a public official to throw out the first pitch. This exception only applies in limited circumstances.

In the present case the Requester has no ceremonial role. Hence, the Requester may not accept a ticket to the golf tournament. He may participate in the tournament by paying the entrance fee himself or reimbursing the vendor \$30.00, the difference between the admission fee and the \$25.00 gift limit. As the Requester is aware, public funds may not be used to pay the entry fee.

The Requester asks the Ethics Commission to find a distinction between accepting a ticket to attend a sporting event, as opposed to accepting a ticket to participate in a sporting event, such as a golf tournament. The Commission is aware that the Requester, as with other public servants, may have a good working relationship with vendors or consultants and may be extended an invitation to participate in a golf tournament from interested parties as both a professional courtesy and gesture of goodwill; not because there is any intent to influence decision-making. However, these circumstances do not create an exception to the rule.

The Ethics Act is a code of conduct with the stated purpose of maintaining confidence in the integrity and impartiality of the governmental process. W.Va. Code§ 68-2-1. To accomplish this purpose, specific limitations have been incorporated in the Act and Legislative Rule. These Rules must be applied in an even-handed fashion. The intent of the parties is not relevant in analyzing whether a gift may be accepted in excess of the \$25 gift limit. In the present case, if the Requester were to

accept a ticket, he would be accepting an item with a fair market value in excess of the \$25.00 limit. The Commission finds no exception to this Rule simply because a public servant is a participant in a sporting event, as opposed to attending as a spectator.

Last, the Requester asks about accepting a ticket to the golf tournament when a portion of the proceeds goes to scholarships. The entry fee for this tournament is \$75.00. No information is provided regarding the nature of the scholarship. Even if the scholarships are for a charitable purpose, this fact does not create an exception to the \$25.00 gift limit which applies to all sporting events. Hence, the Requester may not accept a ticket to this event. Once again, he may pay participate either by paying his own entry fee or paying the difference between the cost of ticket and the \$25.00 gift limitation.

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 public servants and other persons unless and until it is amended or revoked, or the law is changed.

/s/ Larry L. Rowe, Acting Chair
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