

ADVISORY OPINION NO. 2002-14

Issued On July 11, 2002 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A State Retirement Advisor asks whether she may accept a gift given her by a person she assisted in applying for retirement benefits handled by her agency.

FACTS RELIED UPON BY THE COMMISSION

The Advisor is employed full-time by the State's Retirement Board. She advises potential retirees about their State retirement benefits and assists them in completing their retirement application papers.

The Advisor was recently given "a very nice necklace" by a woman for whom the employee had completed retirement processing. The gift appears clearly to be of more than nominal value and the Employee asks whether she may accept this thank you gift.

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code §6B-2-5(c) Gifts. -- (1) ... 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.

(2) ... 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 speaking engagement at the meeting;
- (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

The Ethics Act places restrictions on gifts which public servants may accept from (1) lobbyists, (2) vendors, (3) regulated persons and (4) those with a financial interest in the activities of their governmental agency. WV Code §6B-2-5(c) These four classes are referred to collectively as "interested persons" and a public servant may not accept a gift from an interested person, unless it fits into one of several exemptions the Legislature provided.

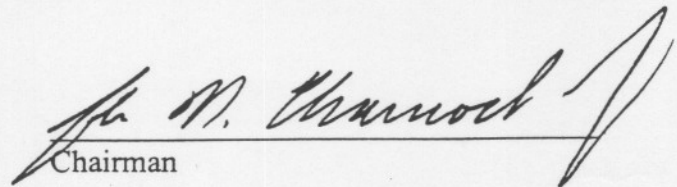
The first step in deciding whether a public servant may accept the offer of a gift is to determine whether it comes from an interested person. The Ethics Act places no restrictions on accepting gifts, unless the gift comes from an interested person. A gift which does not come, directly or indirectly, from an interested person may be accepted. However, a gift from an interested person may not be accepted by a public servant, unless the gift fits into one of several specific exemptions provided for by the Legislature.

The gift-giver here is not a lobbyist or an agency vendor. She is not engaged in an activity regulated or controlled by the agency. If she is to be considered an interested person, it must be because she has "financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of" the Retirement Advisor's official duties.

The job of the agency's Retirement Advisors is to give prospective retirees an estimate of retirement benefits using a mathematical calculation based on years of service, information drawn from agency records, and multiples established by law. They also explain the options for paying out benefits to retirees and their spouses and other beneficiaries.

The financial interests of public servants are clearly affected by the State Retirement Board in a manner distinguishable from the public generally. However, the Commission finds that the actions of the Board's Retirement Advisors, lacking discretion to influence benefits, are essentially ministerial in nature and could not substantially and materially affect a retiree's benefits from the State plan.

Therefore the Commission rules that the gift would not be from an interested person and the Retirement Advisor may accept it, without regard to whether it fits into any of the exemptions set out in WV Code §6B-2-5(c).


Chairman