

ADVISORY OPINION NO. 2000-03

Issued On April 6, 2000 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **State Regulatory Board** asks if it may accept reimbursement of travel expenses from an Association which has a matter before the Board.

FACTS RELIED UPON BY THE COMMISSION

An Association seeks to have a river system in their area reclassified to a less restrictive water quality level in the belief that this will enhance economic development. The Association submitted a complete and appropriately documented application for a review and reclassification of the river system and made an oral presentation before the Regulatory Board.

The Association now asks the Board to travel to the area affected in order to "survey" the river system involved and "discuss" the reclassification with the Association's members. The rules governing the agency's review process neither call for nor mandate a site visit and the Board has previously declined such requests for an interruption of and departure from established procedure.

The Association has offered to reimburse the agency for any travel expenses incurred, since the agency's budget constraints would prevent the trip by Board members and necessary staff. The Board asks whether it can accept the Association's offer, should it decide to make the trip.

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

WV Code 6B-2-5(b) *Use of public office for private gain*. -- "(1) 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."

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The Ethics Act generally prohibits public servants from accepting gifts from interested persons, for example vendors and regulated persons. WV Code 6B-2-5(c). However, in some situations the Ethics Commission has ruled that an interested party may pay or reimburse the expenses of a public servant's official travel.

If a public servant is to qualify for this exemption and accept the payment of travel expenses by an interested person, it must appear that the benefit offered is really a gift to the public servant's agency. The expenses must be for official travel from which there is an overriding public benefit which legitimizes any incidental benefit the public servant receives.

There is no overriding public benefit here. The Board has made it clear that the Board's travel to the remote site would be a substantial departure from established procedure and is not required for its action on the Association's application. Therefore, agency personnel should not accept the Association's offer to pay for nonessential travel.

There is another reason the Board should not accept the Association's offer. WV Code 6B-2-5(b) prohibits public servants from using their public positions, or the influence of those positions, for their own private gain or the private gain of another. Agency officials and employees traveling to the site and engaging in an unnecessary survey and discussion, gives the appearance of a use of office for the private financial gain of the Association's members.

The agency's work is governed by established legislative rules which are designed to be comprehensive and impartial. Those rules do not contemplate or mandate a survey of the river system by the Board members or a meeting with the Association's members to discuss the merits of their application.

Agencies must follow the rules and act impartially. A substantial departure from established procedures, made at the applicant's request, raises a question about the agency's impartiality. To those opposed to reclassification, such a trip would be evidence of agency bias. Particularly where, as here, the applicant pays the cost of an exceptional and nonessential "discussion".



Chairman