

ADVISORY OPINION NO. 99-06

Issued On March 4, 1999 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **State Regulatory Agency Manager** asks whether it would be a violation the Ethics Act for the Agency to allow its mailrunner to accept private mail from Agency personnel and transport it to a postal facility along with Agency mail.

FACTS RELIED UPON BY THE COMMISSION

The Agency altered an existing practice of allowing personal outgoing mail, with stamps affixed, to be accepted by the Agency's mailrunner for transportation to a postal facility. The decision was based on the belief that the practice took time away from the mailrunner's schedule and was a possible ethics violation. The Agency reasoned that a State employee should not use Agency time and an Agency vehicle to process and transport personal mail.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

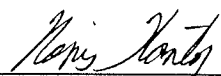
West Virginia Code 6B-2-5(b)(1) provides in pertinent part that...A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person...

ADVISORY OPINION

The basic principle of the Ethics Act's code of conduct is that public servants may not use their public positions, or the influence of those positions, for their own private financial gain or the private financial gain of others. The Commission's authority to act on violations of the Act's code of conduct is limited to conduct which constitutes a material violation of the Act.

An agency manager's decision to afford agency personnel a convenience with no real monetary value, could support a finding of a use of office for private gain, if the cost to the agency was, in the aggregate, a significant amount. A substantial expenditure of agency resources to provide personal benefit to its personnel could rise to the level of a material violation of the Act, even though the financial benefit to each employee was negligible.

It is the agency's responsibility to establish whether the practice constitutes a substantial expenditure of agency resources. Further, an agency's decision to establish more demanding rules than those of the Ethics Act is not at odds with the Ethics Act. Agencies may impose stricter standards than the minimum ethical standards established by the Ethics Act. However, no agency's actions may lessen or reduce the Ethics Act's standards.


Chairman