

**ADVISORY OPINION NO. 99-20**

**Issued On August 5, 1999 By The**

**WEST VIRGINIA ETHICS COMMISSION**

**OPINION SOUGHT**

A **State Administrator** asks whether she may accept an agency vendor's offer of a free ticket to a luncheon featuring a speaker of national prominence.

**FACTS RELIED UPON BY THE COMMISSION**

An agency vendor has offered the Requester a free ticket to a luncheon featuring a prominent journalist as speaker. Tickets cost \$40 and are available only to members of the organization which sponsored the luncheon. The speaker's presentation is the occasion for the luncheon.

The Requester believes the value of the meal to be served at the luncheon is clearly less than the \$40 price of the ticket. She asks the following questions:

- 1/ can the ticket be accepted as "meals and beverages"
- 2/ can the ticket be accepted as two separate gifts - one a gift of meals and beverages and the other an unsolicited gift of nominal value
- 3/ can she accept the ticket and pay the donor the portion of the cost of the ticket attributable to the speaker's presentation
- 4/ can she buy the ticket from the donor for the full \$40 cost

**PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

West Virginia Code 6B-2-5(c)(1) provides in pertinent part that...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.

West Virginia Code 6B-2-5(c)(2) provides in pertinent part that... 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;...

(C) Unsolicited gifts of nominal value or trivial items of informational value;...

### **ADVISORY OPINION**

The Ethics Act places reasonable restrictions on the nature and value of gifts which public servants may accept from certain interested persons, including those who sell or seek to sell to their agencies. The Act provides that public servants may not accept a gift from such a vendor, unless it fits into one of several exemptions. Two of those exemptions are relevant to this situation.

First, the Act permits public servants to accept meals and beverages from anyone - even vendors and other interested persons. Meals may be accepted regardless of their value. Second, the Act permits public servants to accept an unsolicited gift of nominal value [ a value of \$25 or less ]. The requester is aware of these provisions and asks how they apply to the luncheon ticket offered to her.

**Question 1** - Can the ticket be accepted as “meals and beverages”?

If this ticket were just for a luncheon, without the speaker, it could be accepted even if it cost considerably more than \$40. However, this ticket represents a gift of more than meals and beverages. The \$40 cost of the ticket represents the value of both the meal and the speaker’s presentation.

In reality this ticket is not a gift of meals and beverages, but a gift of the opportunity to enjoy a prominent speaker’s presentation. The meal is secondary - it is incidental to the speech. A ticket to an educational, cultural, sports or entertainment event is not acceptable under the meals and beverages exemption, simply because it includes an incidental meal.

The ticket may not be accepted as meals and beverages and its \$40 value renders it unacceptable as an unsolicited gift of nominal value.

**Question 2.** Can the ticket be accepted as two separate gifts - one a gift of meals and beverages and the other an unsolicited gift of nominal value?

The Commission believes that the Act's rules on accepting gifts allow a public servant to accept a gift of meals and beverages and a separate gift of nominal value from the same person on the same day, or as part of a continuous activity. Public servants may, in appropriate circumstances, accept a meal from an interested party and also accept a separate, unsolicited gift of nominal value from the same person.

Two separate gifts, offered in a single ticket, may be accepted, if it can be objectively established that each is acceptable in its own right. The same would be true of a single invitation extended without a ticket. However, the determination of acceptability must be based on objective information which is available to the general public, and not an arbitrary division of value arrived at by the parties involved.

The publicly advertised prices for a public performance or event may be used to establish relative values. Imagine a newspaper ad for a dinner dance which offers tickets for \$35 or \$15 for those who attend only the dance. A public servant could accept a ticket to the dinner dance because each of the two gifts involved is acceptable in its own right. The dinner is exempt as meals and beverages and the dance, objectively valued at \$15, is acceptable as a gift of nominal value.

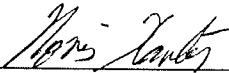
The Commission approves such separation, but only in those situations where the value of the two gifts can be objectively established using information available to the public. In this case the value of the ticket's component parts can not be established by objective, public information. Therefore, the ticket can not be accepted as two separate gifts.

**Question 3.** Can she accept the ticket and pay the donor the portion of the cost of the ticket attributable to the speaker's presentation?

As explained above, this ticket may not be accepted. A public servant who must refuse a gift may not solicit and accept a smaller, acceptable part of the rejected gift, since the Act permits public servants to solicit gifts only for a charitable purpose. The requester may not accept the ticket and pay the donor the portion of the cost of the ticket attributable to the speaker's presentation.

**Question 4.** Can she buy the ticket from the donor for the full \$40 cost?

While the requester may not accept a gift of the ticket or any part of the ticket's benefits, her purchase of the ticket from the donor for the \$40 cost paid by the donor would not be a problem. Asking the donor for the opportunity to buy the ticket could be construed a solicitation of a gift, but if it were, it would be *de minimis* - too trivial to constitute a violation of the Ethics Act.

  
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Chairman