

ADVISORY OPINION NO. 98-27

Issued On December 3, 1998 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **State Employee** asks whether it would be a violation of the Ethics Act for her to invite her public agency clients to attend sales parties at her home.

FACTS RELIED UPON BY THE COMMISSION

The requester is employed by a State child support enforcement agency and works with custodial parents to establish paternity and obtain and enforce child support orders. The requester also tracks payments, arrears and other activity within each case. She has a case load in excess of 500 clients.

The Requester would like to invite some of the custodial parents, or clients, with whom she works to attend sales parties in her home. Avon, Mary Kay, Home Interior and Tupperware are examples of companies which sponsor parties of this type. As "hostess" of a sales party she would receive gifts or discounts from the sponsoring company based on the total sales made at the party.

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. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

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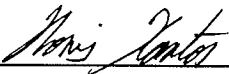
The basic principle underlying the code of conduct created by the Ethics Act is that those in public service should use their positions for the public benefit and not for their own private gain or the private gain of another.

While the Ethics Act contains several specific prohibitions, no code of conduct could possibly identify and prohibit all the situations which might constitute a misuse of office for private gain. Thus the Act imposes the general prohibition against the use of office for private gain and relies on the Ethics Commission to establish, on a case by case basis, whether conduct constitutes prohibited use of office.

There are two specific provisions of the Act, which don't directly apply here, but which give an insight into the dynamics of the Requester's situation. First, the Act prohibits public servants from engaging in personal financial activities with those they regulate. Public servants may not seek or accept employment from those they regulate and may not sell or lease real or personal property to them. Second, the Act prohibits public servants from selling to their subordinates.

Each of these situations recognizes and takes precautions against inherently coercive relationships. In each the public servant is in a position of authority in regard to the other persons. The public servant can grant or withhold official action which may significantly affect the financial well-being of the other persons.

The same is true of the Requester's situation. Regardless of the care she might take to avoid even the slightest suggestion of coercion when she extends a party invitation to one of her clients, the fact is some of them will feel they need to accept, if their interests and those of their children are not to suffer. It is a situation which give the appearance of impropriety and which, the Commission finds, constitutes a use of office for private gain. It would be a violation for the Requester to invite her clients to sales parties at her home.



Chairman