

ADVISORY OPINION NO. 97-28

Issued on September 4, 1997 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

State employee

OPINION SOUGHT

Is it a violation of the Ethics Act for a state employee to make personal phone calls on the State's long distance telephone system?

FACTS RELIED UPON BY THE COMMISSION

A state employee inquires whether he may make personal long distance phone calls while at work using the State's long distance telephone system. The State government's long distance system is called Direct Access Intercity Network (DAIN) and provides long distance service at a substantially reduced rate. For example, the average private cost for a ten minute call is approximately \$2.75. while such a call would average .90 if made using the DAIN system.

Under a possible arrangement with his employer, the requester would be required to keep a log of all personal calls made on the DAIN system and then reimburse his Agency for the cost at DAIN rates. This would result in a significant cost savings compared to the use of a personal calling card or use of his home phone.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b)(1) states 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 Ethics Act prohibits public servants from using their positions for personal private gain. This principal has been applied to several situations involving savings not generally available to the public at large.

For example, in A.O. 95-14 the Ethics Commission held that since the general public may not buy personal items under discounted State contract prices then state employee purchases for personal use under their agencies' state contracts would be a use of office for private gain. In A.O. 95-52 the Commission also held that an agency official could not make personal use of lodgings maintained by his agency for use by its clients at subsidized rates (\$10.60 per night)

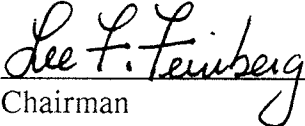
even if the lodgings were not in use at that time. The Commission noted that "[m]embers of the public who commute to and from private workplaces do not have the option of staying at subsidized housing."

Finally, in A.O. 96-08 the Commission held that a State Agency could not give its own employees discounts on purchases made from the Agency's gift shops. The Commission noted that "when a fringe benefit which is not ordinarily available to the general public is used as a perquisite for agency employees, a distinct appearance of impropriety is created. This appearance is based on the public's inevitable perception that public servants are using their unique position of public trust for self-enrichment."

The right to use the State's DAIN phone system for private long distance phone calls can give agency personnel a financial benefit since long distance calls using the DAIN system are billed at a rate significantly less than the cost to the general public for similar calls. There are, however, added costs to the agency, if private use of the DAIN system is permitted.

Documenting the private use of official long distance phone service would place an additional burden on agency operations. Those who used the DAIN system for private long distance calls would need to maintain phone logs and reconcile those logs against agency phone bills in order to make periodic accounting of their private use of agency phones. Presumably some degree of supervision of those accounting and the payments made would be required.

The Commission finds, based on its earlier opinions and the considerations mentioned above, that the use of the State DAIN long distance phone system for personal phone calls unrelated to public work would constitute a use of office for private gain in violation of WV Code 6B-2-5(b).


Chairman