

ADVISORY OPINION NO. 94-39
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON FEBRUARY 2, 1995

GOVERNMENTAL BODY SEEKING OPINION

A State Employee

OPINION SOUGHT

Does a gift certificate to a local restaurant fall within the meals and beverages exemption from the Ethics Act's prohibition against accepting a gift from a vendor?

FACTS RELIED UPON BY THE COMMISSION

Several agency vendors sent or gave agency employees gift certificates as Christmas presents. Although most of the certificates were for less than \$25, one was a \$50 gift certificate to a local restaurant. The employee who received the \$50 gift certificate asks whether such a certificate is considered to be a gift of meals and beverages.

STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(c)(1) states 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) states 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...The provisions of subdivision (1) of this subsection do not apply to:

- (A) Meals and beverages;...
- (C) Unsolicited gifts of nominal value;..

ADVISORY OPINION

The Ethics Act prohibits public servants from accepting a gift from an interested person [lobbyists and those who do business with, are regulated by, or are otherwise financially interested in the activities of their agency], unless the gift fits into one of several specified exceptions.

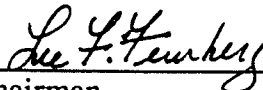
The Act's prohibition against accepting gifts from interested persons is a declaration that such gifts create an appearance of impropriety, if not an opportunity for actual abuse. The exceptions modify an outright prohibition against all such gifts, regardless of value, to a more practical rule legitimizing the acceptance of certain gifts generally viewed as inoffensive. This opinion deals with two of those exceptions.

First is the exception for **gifts of nominal value**. Gifts with a monetary value of \$25 or less are considered gifts of nominal value. This exception permits public servants to accept gifts of nominal value from anyone, even interested persons. Since none of the gift certificates were solicited by the public employees to whom they given, the Ethics Act would not prevent the acceptance of those with a value of less than \$25.

The second exception permits public servants to accept **meals and beverages**, without regard to value, from interested persons. Thus, if a gift certificate to a restaurant fits within the meals and beverages exception, it would be acceptable even though at \$50 it is of more than nominal value.

The meals and beverages exception is not a decision that food is so benign that gifts involving it need not be regulated. It is, rather, a recognition of the important role dining plays in the social and business practices of our society. The exception acknowledges the value and legitimacy of mealtime meetings and preserves the dining event for use in the public sector - even though the reasonable expenditures involved may exceed "nominal value".

Absent the customary meeting together for a meal, which is implicit in the meals and beverages exception, there is no justification for permitting public servants to accept gifts without regard to the general guide of nominal value. The Commission rules that the meals and beverages exception applies only to meals and beverages received and consumed in the presence of the donor or sponsoring entity. Therefore, the requester may not accept the gift certificate of \$50 to a local restaurant from an agency vendor, since it is of more than nominal value.


Chairman