

ADVISORY OPINION NO. 95-03

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 2, 1995

GOVERNMENTAL BODY SEEKING OPINION

A County Sheriff

OPINION SOUGHT

Is it a violation of the Ethics Act for a County Sheriff to accept a gift from the County Deputy Sheriffs' Association?

FACTS RELIED UPON BY THE COMMISSION

The requester is a County Sheriff. During the holidays he received a gift of a check in the amount of \$450 to be used for a weekend at a resort in the State. This gift was given to the Sheriff by the County Deputy Sheriffs' Association, which is comprised of nineteen deputy sheriffs. The gift was obtained from the Association's general funds which encompasses the monthly dues collected from all the members. The purpose of this Association is to provide a forum to address the problems and concerns which the Deputies may have with the Sheriff's administration.

The Sheriff has not used this money and will return the check to the County Deputy Sheriffs' Association if the Commission determines that it is not an acceptable gift.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(c)(1) states in pertinent part that...No public official...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...a person who is a public official...Notwithstanding the provisions of subdivision (1) of this subsection, a public official...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;
- (B) Ceremonial gifts or awards which have insignificant monetary value;
- (C) Unsolicited gifts of nominal value or trivial items of informational value;...
- (F) Gifts that are purely private and personal in nature; or
- (G) Gifts from relatives by blood or marriage, or a member of the same household.

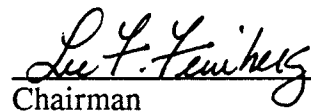
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Pursuant to WV Code §6B-2-5(c)(1) a public official may not accept any gift from persons who are seeking to conduct business with their governmental agency, persons who are regulated by their governmental agency, or any person who has a financial interest in how they perform their public duties.

The purpose of the Deputy Sheriffs' Association is to establish a forum to assist the Deputy Sheriffs in addressing the problems and concerns which they may have with the Sheriff's administration. Clearly the Association has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the sheriff's official duties. Consequently, the Association would fall within one of the categories of prohibited gift givers.

The Commission notes that WV Code §6B-2-5(c)(2) establishes certain exemptions from the prohibition against the acceptance of gifts. Some of these exemptions include meals and beverages; unsolicited gifts of nominal value or trivial items of informational value; or gifts that are purely private and personal in nature. However, in this instance, the gift does not fall within any of these exemption categories. Clearly the gift of a check in the amount of \$450.00 would be a gift of more than nominal value. Further, the Commission finds that a monetary gift from an organizational donor does not constitute a "purely private and personal" gift as that term is used in the Ethics Act.

Therefore, it would be a violation of the Ethics Act for the County Sheriff to accept the gift of a check in the amount of \$450.00 from the County Deputy Sheriffs' Association since the Association falls within one of the categories of prohibited gift givers and the gift does not fall within one of the exemption categories established by the Ethics Act.


Chairman