

ADVISORY OPINION NO. 95-07

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 2, 1995

GOVERNMENTAL BODY SEEKING OPINION

A State Senator

OPINION SOUGHT

- a. Is it a violation of the Ethics Act for a State Senator to serve as an unpaid host of a one-hour, weekly talk radio show?
- b. Is it a violation of the Ethics Act for a State Senator to be employed by a local radio station as a daily talk radio show host?

FACTS RELIED UPON BY THE COMMISSION

In November 1994 a trades union foundation arranged with a local radio station to buy one hour of time on eight consecutive Saturday mornings to air a progressive, liberal-oriented talk radio program. The Senator was asked by the representatives of the foundation to host the new program. He was not compensated for his participation.

To defray the costs of the program, representatives of the Foundation contacted four other organizations to co-sponsor the show. One of the goals of these radio talk shows was to respond to what some perceive to be the domination of talk radio by ultra-conservative hosts. At the same time, the Foundation hoped to demonstrate to the station management that there was a viable market for a show focusing on consumers, good government, environmental and labor issues from a liberal perspective.

The Foundation further hoped that the show will serve as a springboard for a daily, one-hour show. Like most radio programming, such a daily show would be sponsored by advertisements sold directly to local merchants and other groups by the radio station's personnel. Should the show materialize in the future, the requester would be paid by the radio station for hosting the show.

The requester has stated that he would take a leave of absence from the station during any future campaign for public office.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(c)(1) states in pertinent part that...No official...may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official...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.

ADVISORY OPINION

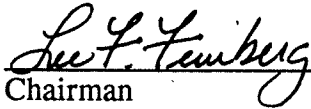
In considering this request the Ethics Commission has analyzed the facts presented in light of the statutory violations contained in the Ethics Act. The Commission has determined that no provision of the Ethics Act prohibits a State Senator from serving as an unpaid host of a one-hour, weekly talk radio show. Similarly, there is no provision of the Ethics Act which prohibits a State Senator from being employed by a local radio station as a daily talk radio show host.

Pursuant to WV Code §6B-2-5(c)(1) a public official may not accept a gift from certain "interested" persons. The Commission has considered whether the public attention the requester receives by acting as the show's host is a gift from the show's sponsors in violation of the Ethics Act's regulation on gifts. While there may be some value to this public attention, the Commission finds that it is not a violation of the Ethics Act's prohibition against the acceptance of gifts.

It is clear that the Ethics Act does not prohibit a public official from accepting the political endorsement of a politically active group such as a chamber of commerce or labor union. Although the benefit of such an endorsement can be of substantial "political" value to a public official, the endorsement does not constitute a violation of the Ethics Act's prohibition against the acceptance of gifts. This type of benefit would not be considered a gift as that term is used in the Ethics Act.

Similarly, the benefits the Senator receives from the public attention flowing from hosting the radio talk show is not a gift as that term is used in the Ethics Act. Therefore, it would not be a violation of WV Code §6B-2-5(c)(1) for the requester to serve as an unpaid host of a one-hour, weekly talk radio show or for him to be employed by a local radio station as a daily talk radio show host.

The articulation of positions on public issues is the essence of free speech and does not constitute a violation of the Ethics Act. However, if in the commercialization of the program there is a misuse of office to obtain sponsors there would be a violation of the Ethics Act or other laws.


Chairman