

ADVISORY OPINION NO. 95-18

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 1, 1995

PUBLIC SERVANT SEEKING OPINION

Division Manager of a State Agency

OPINION SOUGHT

- 1.) Is it a violation of the Ethics Act for employees of a State Department to solicit private entities to co-sponsor social events or donate gifts for a regional conference of governmental agencies?
- 2.) Is it a violation of the Ethics Act for employees of a State Department to solicit advertising space or exhibit space at a regional conference of governmental agencies?
- 3.) Is it a violation of the Ethics Act for employees of a State Department to accept unsolicited corporate gifts such as a dinner or golf outing for the attenders of a regional conference of governmental agencies?

FACTS RELIED UPON BY THE COMMISSION

A State agency is hosting a conference to be attended by similar state tax agencies throughout the region. No State funds are used to support the conference, beyond the registration fees of State agency personnel who attend. The agency proposes to have its personnel contact State trade associations and ask them to sponsor or help pay for conference social events or provide gifts to those attending the conference. The agency explains that this will reduce registration fees. The associations' members are State businesses subject to the regulatory authority of the agency.

Also, the agency would like to sell advertising space in its meeting program guide and charge exhibitors for their use of exhibit space at the meeting.

The State agency further inquires as to the propriety of accepting non-solicited corporate sponsorship of social events. For example, an oil company would volunteer to underwrite the cost of a dinner or golf outing.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that...a public official or public employee may not knowingly and intentionally use his...office or the prestige of his...office for his...own private gain or that of another person.

West Virginia Code §6B-2-5(c)(1) states in pertinent part that...a public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family....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 or trivial items of informational value;...

ADVISORY OPINION

1.) WV Code §6B-2-5 (c)(1) prohibits public servants from soliciting gifts unless they are for a charitable purpose. The Commission finds that the purpose of the Agency's proposed solicitation is not a "charitable purpose" as that term is used in the Ethics Act.

Therefore, it would be a violation of the Ethics Act for employees of a State Department to solicit private entities to co-sponsor social events or donate gifts for a regional conference of governmental agencies.

2.) The agency proposes to defray some of the costs of the conference by selling advertising space in the conference bulletin or program and charging exhibitors for exhibition space used at the meeting site. This will involve agency personnel soliciting advertising sales from agency vendors and persons or businesses engaged in activities regulated by the agency.

Selling advertising does not constitute soliciting a gift, unless the advertising charge is merely a contribution in disguise or the advertising, on its face, renders no real benefit to the advertiser. A commercially defensible sale of advertising or exhibit space with real commercial value does not constitute prohibited gift solicitation.

However, WV Code §6B-2-5(b)(1) prohibits public servants from using their positions for their own private gain or the private gain of another. In Advisory Opinion #92-04 the Commission dealt with the propriety of a State Division allowing its personnel to solicit new members for an association of banking professionals of which the Division was a member. The Commission ruled that the Division's employees could not use the Division's public resources such as postage, letterhead, photocopying and labor in soliciting new members. The Commission explained that "Although no personal gain or benefit will accrue to any division employee as a result of these activities, the Association will gain financially. Since the Association is a private rather than public entity, there will be a resulting private gain which is prohibited by WV Code §6B-2-5(b)(1). Therefore it would be a violation of the Ethics Act for Division personnel to use Divisional resources to solicit increases in the Association's membership."

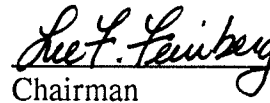
Here the agency's proposed sale of advertising, if the proceeds are used to help pay for social events and personal gifts to those attending the conference, is more at odds with the prohibition against the use of office for private gain than the banking association's general membership drive. It would be a violation for agency personnel to use their titles or agency time and resources to conduct conference advertising solicitations which directly or indirectly help finance conference social events, provide gifts to those attending the conference, or reduce their personal cost of attending.

The solicitation of proper conference advertising by agency personnel would not be a violation, **if** the proceeds were used only to reduce the cost of presenting the core elements of an official conference, the registration fee for which is paid by the agency, **and** the proceeds were not used directly or indirectly to provide or expand social events or other personal benefits such as meals, entertainment or gifts to those attending the conference.

3.) Subject to certain exceptions, WV Code 6B-2-5(c) prohibits a public servant from accepting a gift from an "interested person", i.e. (1) lobbyists, (2) those who sell or seek to sell to the public servant's agency, (3) those engaged in an activity regulated or controlled by the public servant's agency and (4) those with financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his or her official duties.

It is hard to imagine the circumstances under which a state taxpayer, who did not qualify as an "interested person", would gratuitously decide to provide social entertainment or gifts to the personnel of our State's tax agency and similar agencies of other states within the region. Should such circumstances arise, the Ethics Act would place no restriction on the acceptance of gifts by our state public servants. However, they may accept gifts from interested persons only if the gifts are unsolicited and fit into one of several exceptions set out in the Ethics Act. Two of those are relevant to this situation - (1) meals and beverages and (2) gifts of nominal value, i.e. \$25 or less.

The Commission has carefully examined the potential, under the particular facts presented, for inappropriate contact between regulators and those regulated and limits the effect of this Opinion to the facts presented. The advertising and promotional guidelines suggested by this Opinion should be reviewed by other public servants facing similar factual situations; but the prohibitions contained in this Opinion are limited to the precise facts presented in this request.


Chairman