

ADVISORY OPINION NO. 95-26

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 1, 1995

GOVERNMENTAL BODY SEEKING OPINION

Mayor on behalf of a part-time City Official

OPINION SOUGHT

Is it a violation of the Ethics Act for a part-time public official to receive a gift that has traditionally been extended to her based upon private business relationships?

FACTS RELIED UPON BY THE COMMISSION

An assistant general counsel for a large corporation also serves part-time as a member of a City's Urban Renewal Authority. In her capacity as corporate counsel she is routinely involved with outside counsel regarding legal matters affecting the Corporation. By virtue of her position as corporate legal counsel, she is routinely invited to participate in golf outings paid for by businesses or firms that wish to do work with her Corporation.

An outside law firm has historically represented the requester's corporation on labor and tax matters. This outside law firm has traditionally sponsored a Fourth of July golf outing and invites many of its prominent clients. The requester and other selected executives in her corporation have been invited to these outings based upon the close personal and work relationships between members of the outside firm, the requester and other executives in her company. As host of the golf outing the outside law firm customarily pays for the costs associated with taking part in the golf outing. These costs exceed the \$25.00 nominal gift exception.

This year, the outside law firm is representing another client in a matter not related to the requester's corporation. That case involves an appeal of a decision of the Urban Renewal Authority.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 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 Section 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. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

- (F) Gifts that are purely private and personal in nature...

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West Virginia Code §6B-2-5(c)(1) prohibits a public servant from accepting a gift if it comes from a lobbyist, vendor, regulated person, or a person with financial interests that could be materially and substantially affected in how the public servant performs his or her duties. Any gift from a member of one of these four classes of donors may not be accepted unless it comes within a list of exceptions contained in WV Code §6B-2-5(c)(2).

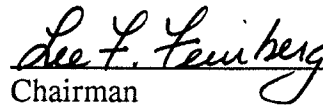
The Commission finds that since the outside law firm represents a client in an action involving the Urban Renewal Authority, it has a financial interest that could be materially and substantially affected by how the requester performs her responsibilities on the Urban Renewal Authority. Therefore, any gift from the firm would be unacceptable unless it fits within a statutory exception under WV Code §6B-2-5(c)(2).

Under the facts provided, the requester has historically been invited to attend the annual golf outing sponsored by the outside firm. These invitations predate her service on the Urban Renewal Authority. In fact, they are related to the outside firm's interest in maintaining good business relations with a major client. This motivation is evidenced further by the fact that invitations to the outing have been given not only to the requester but to other significant executives in her corporation.

The Commission finds that the history of invitations to the corporate counsel and other executives of major clients of the outside law firm establishes that the gift of the golf outing is not related to the requester's public service on the Urban Renewal Authority. Rather, it is related to her **private** employment as assistant general counsel for a corporation and the personal and working relationships which have developed over the years with that outside law firm. The Commission bases this conclusion on the assumption that there is no quid pro quo involving public affairs associated with the invitation.

In this case the facts establish that the gift is not intended to impair the impartiality and independent judgment of the requester. It is merely a continuation of an established social practice between executives of two private businesses. The Commission therefore determines that the gift of the golf outing is a purely private and personal gift not related to her public position and falls within the exception at WV Code §6B-2-5(c)(2)(F). Therefore the requester may accept the gift without violating WV Code §6B-2-5(c)(1).

The Commission cautions that this opinion is limited to the facts of this case and should not be relied upon by others without prior consultation with the Commission.


Chairman