

ADVISORY OPINION NO. 95-52

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 4, 1996

PUBLIC SERVANT SEEKING OPINION

State Official

OPINION SOUGHT

Is it a violation of the Ethics Act for a public official to use subsidized agency housing rather than a private motel?

FACTS RELIED UPON BY THE COMMISSION

The requester is the director of a state agency. The agency maintains dormitory housing for clients. A portion of this housing has traditionally been used to house family members of clients who have reason to stay at the facility for several days. Such persons are charged \$10.60 per night for such use.

The requester maintains his private residence in a city which is approximately 80 miles from his public agency. He anticipates that there may be days when inclement winter weather would make commuting to and from his private residence difficult. On those occasions he would like to stay at the agency's dormitory housing and pay the subsidized rate of \$10.60 per night. He would stay there as a last priority guest if there was an excess of demand for the housing. To date, however, limited demand for these rooms has never required a prioritizing of eligible guests.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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

ADVISORY OPINION

The requester's public agency maintains dormitory housing for clients. A portion of this housing is used to house family members of clients at a cost of \$10.60 per night. The requester maintains his private residence in a city which is approximately 80 miles from his place of employment and during inclement weather he would like to use subsidized agency housing rather than a private motel.

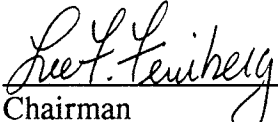
West Virginia Code 6B-2-5(b)(1) provides that public servants may not use their position or its resulting prestige for personal private gain. Legislative rules implementing this provision prohibit the use of government property for personal activities that result in private gain. See Title 158 CSR §6-5.2.

Clearly, in this instance, there would be private gain to the requester if he stayed at his agency's housing since he would thereby save the difference between the cost of agency housing (\$10.60 per night) and that of a private motel.

Further, in Advisory Opinion #95-14, the Commission determined that it would be a violation of the Ethics Act for public employees to purchase merchandise through a State contract when the merchandise is intended for their own personal use. Since the public generally is not permitted to buy at State prices, the Commission reasoned that it would be a use of office for private gain for a public employee to use his or her position to make personal purchases at State contract prices.

Similarly, in this case, the financial advantage of having access to the state agency's subsidized housing is not available to the general public. Members of the public who commute to and from private workplaces do not have the option of staying at subsidized housing. In the event of severe winter weather they must either risk the commute or incur the expense of a private motel.

Therefore, the Commission finds that it would be a violation of WV Code 6B-2-5(b)(1) if the requester took advantage of subsidized agency housing to avoid a commute or the costs of a private motel.


Chairman