

ADVISORY OPINION NO. 93-12

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MAY 6, 1993

GOVERNMENTAL BODY SEEKING OPINION

Director of an Educational Network

OPINION SOUGHT

Is it a violation of the Ethics Act for employees of a State Educational Network to purchase personal computers from State vendors at State contract prices?

FACTS RELIED UPON BY THE COMMISSION

When a State Educational Network needs to purchase computer equipment, materials, or supplies it distributes a request for a proposal to interested vendors. In its request proposal, the State Educational Network includes a clause for personal purchases which provides that vendors may furnish Network employees with the opportunity to purchase personal computers direct from the vendor at State contract prices.

Due to the competitive nature of computer sales, several vendors have indicated that they are willing sell personal computers at the State price to individuals. This offer is extended to all State Education employees regardless of their employment position. No money is exchanged between the State Network and its employees and personal purchases are not made with State funds. The employees deal directly with the vendor and pay the appropriate sales tax. After receiving the request proposal the potential vendor submits a bid package and indicates if it is vendor policy to offer such incentive discounts by including this clause in the contract. These discounts are similar to other sales prices available to the general public.

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...

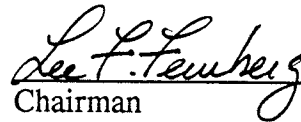
ADVISORY OPINION

Pursuant to WV Code §6B-2-5(b)(1) a public official or a public employee may not knowingly or intentionally use his or her office for private gain.

The purpose of securing a contract and awarding such contract on a low bid basis is to procure the best service, materials and prices available **to the State** and consequently economize the expenditure of taxpayers' money. The issue of whether public employees may also purchase personal computers through the vendor and receive state discount prices should not be a consideration when awarding a vendor contract.

If a public official includes this type of clause in a public contract there is an improper use of public office for his own private gain or the private gain of another. Therefore, it would be a violation of WV Code §6B-2-5(b)(1) for the State Network to include a clause in a request proposal or a public contract which would allow the public officials and employees to purchase personal computers from State vendors at State contract prices.

This opinion is limited to the question posed in the original request letter. Should the requestor have any additional questions or require any further information he should contact the Commission in writing and include all relevant information.


Chairman