

ADVISORY OPINION NO. 93-19

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 3, 1993

PUBLIC SERVANT SEEKING OPINION

A State Legislator

OPINION SOUGHT

Is it a violation of the Ethics Act for a State Legislator to accept payment for the costs of a University leadership development program when the expenses for the program are underwritten by corporate sponsors?

FACTS RELIED UPON BY THE COMMISSION

The requestor was nominated by a leader of the Legislature to attend a Program for Emerging Political Leaders which will be held at the Graduate School of Business of an out of state University. Out of the 120 nominees, the requestor was one of thirty individuals selected to attend.

Nominations were made by the bipartisan leadership of both houses of various state legislatures. The final selection was made by a committee composed of the graduate school faculty, corporate sponsors, and noted state legislative leaders.

The Program will last approximately three days. It is designed to expand the leadership skills of emerging state legislators and broaden their perspectives so they are better able to address the public policy issues of the future. The Program will consist of a variety of presentations from leading political and business leaders. Members of the University's faculty will also lecture on current leadership concepts.

The costs of the Program for the participants will be supported by corporate sponsors and a grant made possible by UST Inc.

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.

West Virginia Code §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 is 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 prior Advisory Opinions the Ethics Commission has approved the practice of government agencies allowing vendors or regulated persons to pay the expenses of agency personnel who attend events specifically designed to enhance their job related skills or knowledge.

The Commission held that such practice did not violate the Ethics Act's prohibition against the acceptance of gifts since both the governmental entity and the public at large benefit from the increase in the traveler's job related skills and knowledge. Although there may be some individual benefit to the traveler, it is not the type of benefit which violates the Ethics Act.

In Advisory Opinions No. 92-35 and 92-38 the Commission established five criteria to assist public servants in determining whether accepting financing for a trip from someone outside their agency would violate the Ethics Act:

The trip must be necessary to fulfill an existing agency need and the trip must be appropriate for the proposed traveler. Since a leader of the Legislature nominated the requestor and he was then selected from a large field by a diverse panel representing a variety of interests, it appears that the requestor is an appropriate person for this trip and that the skills and experience to be gained from the Program will benefit the Legislature.

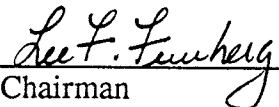
The site of the proposed trip must be appropriate. Although the Program will be held out of state, it is apparent that no similar seminar is available in West Virginia. Further, the Program will not take place in a resort area but rather on a University Campus.

The trip must offer a reasonable return on the time spent. The Commission has determined that the Program will offer a reasonable return for the time spent. The Program is strictly structured to insure a full agenda for the total length of the Program lasting less than three days. Further, the Program emphasizes an educational approach by providing the participants with a full schedule of events offering both practical experience and scholarship.

The benefit to the agency must be significantly greater than the incidental benefit to the traveler. It is the opinion of the Commission that any incidental benefit to the requestor will be outweighed by the resulting benefit to the agency.

After applying these criteria to the facts presented, the Commission finds that the requestor would not violate the provisions of WV Code §6B-2-5(c)(1) by attending the Program regardless of whether the expenses incurred for such attendance are underwritten by corporate sponsors.

Further, since the acceptance of the trip is deemed to be appropriate under WV Code §6B-2-5(c)(1), it would not constitute a violation of WV Code §6B-2-5(b)(1), which prohibits a misuse of public office for private gain, for the requestor to participate in the Program.


Chairman