

ADVISORY OPINION NO. 93-31
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON SEPTEMBER 2, 1993

GOVERNMENTAL BODY SEEKING OPINION

A County Solid Waste Authority

OPINION SOUGHT

Is it a violation of the Ethics Act for the County Solid Waste Authority to accept an interest free loan from a business that the Authority regulates?

FACTS RELIED UPON BY THE COMMISSION

A County Solid Waste Authority operates an inmate work release program but is currently experiencing a cash flow problem. In order to rectify the situation the Authority would like to bid on State funded open dump clean up projects which would utilize the Authority's supervisor and inmate work participants to facilitate the clean up.

However, the Authority would need to continue to pay the expenses of the inmate work release program during the clean up. Financial projections strongly suggest that those funds would not be available and the Authority has been told that the payment by the State for a successful bid would take three or four months.

Recently the owner and operator of a company which constructed a Class B landfill in the County but has not yet received authorization to begin conducting business, has offered to provide \$2,500 operating capital for the purpose of retaining the inmate cleanup program. This interest free loan is to be repaid by the Authority upon receipt of the payment from the State for work performed on the open dump clean up projects.

The County Solid Waste Authority does not issue the Certificate of Need which allows the owner of the Company to operate his facility. However, the Authority would monitor the landfill facility once it is operational to insure compliance with Authority rules and regulations.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE STATE

West Virginia Code Section 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: **Provided**, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position as such is subordinate to the soliciting official or employee...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.

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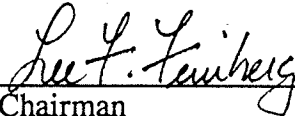
The owner and operator of a company which constructed a Class B landfill in the County has offered to provide \$2,500 operating capital for the purpose of retaining the Solid Waste Authority's inmate cleanup program. This money would be disbursed in the form of an interest free loan. This type of loan would be considered a "gift" as that term is used in the Ethics Act.

Pursuant to WV Code §6B-2-5(c)(1) public officials and public employees may not accept any gift from persons who are seeking to conduct business with their governmental agency, persons who are regulated by their governmental agency, or any person who has a financial interest in how they perform their public duties.

This subsection prohibits individual public officials and employees from **personally** accepting gifts. In this instance the requestor has stated that the loan from the Company owner would not be used for any specific public servant's personal benefit but for the County Solid Waste Authority and the Authority's inmate work release program. The Commission determined in Advisory Opinion #90-176 that governmental agencies may accept gifts **as an entity** if the acceptance of such gifts inures to the benefit of the public generally or is in furtherance of the operation of the office.

However, the Commission notes that care should be taken that no gift should be solicited or accepted under facts or circumstances which are or give the appearance of impropriety or the creation of a quid pro quo. If there is evidence of some quid pro quo between the Authority and the landfill owner, then acceptance of the loan would violate the Ethics Act. Absent such evidence, however, it would not be a violation of subsection 6B-2-5(c) of the Ethics Act for the County Solid Waste Authority to accept a loan to provide temporary funding for the Authority's inmate work release program.

The Commission suggests that it would be preferable for the appropriate fiscal authorities to provide the necessary stop gap funding rather than allow the Authority to accept a gift from a regulated person.


Chairman