

ADVISORY OPINION NO. 92-38

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON OCTOBER 1, 1992

GOVERNMENTAL BODY SEEKING OPINION

A State Legislator

OPINION SOUGHT

Is it a violation of the Ethics Act for a State Legislator to attend a Health Fairs Conference sponsored by a pharmaceutical manufacturer?

FACTS RELIED UPON BY THE COMMISSION

The Legislator has been invited to attend a Health Affairs Conference in North Carolina which is being sponsored by a pharmaceutical manufacturer. The Manufacturer has offered to pay the Legislator's travel and lodging expenses and the necessary incidentals incurred during the conference and the days immediately preceding and following the conference.

The stated purpose of the conference is to bring together key state legislators from throughout the country for briefings and panel presentations focusing on critical care issues in the United States. The conference will also enable legislators to become better acquainted with the Manufacturer which is a leader in the nation's pharmaceutical industry.

Although the Legislator will not attend this year, he inquires as to whether accepting the trip next year would violate the Act.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(b)(1) states in pertinent part that...a public official...may not knowingly and intentionally use his... office or the prestige of his...office for his...own private gain or that of another person. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

West Virginia Code §6B-2-5(c)(1) states in pertinent part that...a public official...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.

ADVISORY OPINION

Gifts

In previous Advisory Opinions the Ethics Commission has approved the practice of government agencies permitting vendors to pay the expenses of agency personnel when they attend events designed to enhance their job related skills or knowledge. The approval is limited to reasonable expenditures for travel, lodging, and meals incidental to attending the event.

This practice does not violate the Ethics Act's prohibition against the acceptance of gifts because the employing agency and the public benefit significantly from the increase in the traveler's job related skills or knowledge. Although the individual traveler benefits, it is not the type of benefit which violates the Ethics Act.

There is no improper use of office for private gain where there is an overriding public benefit to such travel and the true recipient is the governmental agency not the individual agency traveler. The incidental benefit to the individual is legitimized by the overriding public benefit.

This principle of overriding public benefit is applicable to gifts of trips from any one of the "interested persons" enumerated in W.V. Code §6B-2-5(c)(1) - lobbyists, regulated persons, and persons with a financial interest that is substantially affected by the traveler's official duties.

To assist public officials and public employees in determining whether accepting financing for a trip from someone outside the agency is acceptable, the Commission establishes the following guidelines:

- 1. The trip must be necessary to fulfill an existing agency need.**

The first consideration must be whether the trip will significantly enhance the traveler's occupational skill or knowledge or provide important information needed by the agency to meet its official mandate. Public employees and officials who have been offered trips should consult with their supervisor or agency head for guidance in making this judgment.

If the trip was conceived and scheduled by the agency prior to and independent of the offer of payment from a third party, then it is likely that the trip is necessary to the agency's official activities.

The skill, knowledge or information to be gained from the trip should meet a clear **immediate** need of the agency. The information should be of immediate value to current or planned activities of the agency rather than theoretically valuable to activities that are neither current nor planned for the foreseeable future.

2. The trip must be appropriate for the proposed traveler.

A trip is appropriate for the traveler who needs and will use the information or job skill enhancement or who is the agency employee most suitable to acquire and transfer the information or skills to other appropriate agency personnel.

3. The site of the proposed trip must be appropriate.

Central to this inquiry is a consideration of whether the trip is a reasonable means of meeting the agency's needs. For example, it would not be reasonable for the agency to send its personnel to an out of state resort to obtain information that is readily available locally. Similarly, it would not be reasonable to permit an interested person to provide agency personnel such a trip.

4. The trip must offer a reasonable return on the time spent.

The trip should represent a reasonable investment of the traveler's time when weighed against the information acquired or the degree of improvement in job skills. A five day trip comprised of two travel days and three days of light class work would not be a reasonable way to acquire information or skills which could be adequately presented in a one day seminar.

This consideration also applies to part-time officials and employees who might travel outside official work hours. If they accept inappropriate free trips offered because of their public positions they may violate the Ethics Act's prohibition against using the prestige of office for private gain.

5. The benefit to the agency must be significantly greater than the incidental benefit to the traveler.

If the incidental personal benefit to the traveler outweighs the benefit to the agency, then the trip is in reality a gift to the traveler and not the agency. In such a case the trip should not be accepted because it is a gift to the individual of more than nominal value.

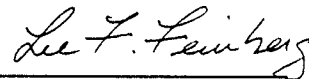
A safe rule would be to limit acceptance to only expenses that the agency itself would accept for reimbursement, i.e. reasonable food, travel, lodging, and attendance fees. First class airfares, deluxe accommodations, and other perks not associated with the basic travel, meals, and lodging required by the trip would increase the incidental benefit to the traveler.

It is important to note that these guidelines do not apply to public servants who receive offers of trips due to their private business activities. In such cases there is a presumption that the offer of the trip is not due to the individual's public office or employment. Rather, the trip is offered because he or she is a member of a wider business group whose members all have similar access to such a trip.

The foregoing guidelines provide the requestor and other public servants a means of judging whether a specific offer of a trip is acceptable under the Ethics Act. Based on the information provided to the Ethics Commission the proposed trip would not appear to be acceptable under the Act. If, however, after applying these guidelines to the specific facts of his case, the requestor is uncertain as to the propriety of accepting the trip, he may ask for an Advisory Opinion and provide the additional facts necessary for the Commission to establish whether the trip would be a gift to the Legislature or the requestor.

Under certain facts and circumstances, not present in this case, gifts to a governmental entity may be considered an attempt to influence public policy or impair the impartiality and independent judgment of individual public servants. Such gifts could also constitute a lobbying activity which would require registration of the donor as a lobbyist and reporting of the expenditures associated with the gifts.

Care should always be taken that no gift is tendered or accepted under facts or circumstances which could impair the impartiality and independent judgment of public servants in a particular governmental agency or give the appearance of impropriety or the creation of a quid pro quo.



Chairman