

**ADVISORY OPINION NO. 91-75**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON OCTOBER 3, 1991**

**GOVERNMENTAL BODY SEEKING OPINION**

A Public Employee

**OPINION SOUGHT**

Whether it is a violation of the Ethics Act for a public employee to accept free accommodations from a friend who is employed by a Company which conducts business with her governmental agency?

**FACTS RELIED UPON BY THE COMMISSION**

The requestor is employed as a clerk III in a department of a State Division. Her employment responsibilities include purchasing supplies and materials for this Department. Any purchase which would total more than \$500 is contracted by public bid.

The requestor has scheduled her vacation for early fall. While she is on vacation she would like to stay overnight with a personal friend. The friend is employed by a Company which has a statewide contract to supply materials which are used by the requestor's State Agency. Also, the friend has assisted the requestor in developing or locating specific items needed by her State Department. They have been friends for approximately 2 1/2 years, which is prior to the date when the requestor's employment responsibilities were expanded to include purchasing.

**PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

West Virginia Code Section 6B-2-5(c)(1) states in pertinent part that...No public employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the...employee knows or has reason to know:

- (A) Is doing or seeking to do business of any kind with his or her agency;...
- (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.

West Virginia Code Section 6B-2-5(c)(2) states in pertinent part that...Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a...public employee may accept a gift described in this subdivision...

(A) Meals and beverages;...

(F) Gifts that are purely private and personal in nature;...

### ADVISORY OPINION

Pursuant to subsection 6B-2-5(c)(1) of the Ethics Act a public employee may not accept any gift from a person who is seeking to conduct business with her governmental agency or from any person who has financial interests which may be substantially affected by the performance of her official duties.

As an employee of a Company which conducts business with the State, the requestor's friend would fall within the prohibited categories outlined above.

However, subsection 6B-2-5(c)(2) establishes categories of gifts which are exempt from the prohibition against the acceptance of gifts by a public employee. Gifts which are purely private and personal in nature are included in the exemption categories.

It is the Commission's opinion that in this specific situation it would not be a violation of subsection 6B-2-5(c)(1) of the Ethics Act for a public employee to accept free accommodations in the home of a friend who is employed by a Company which conducts business with her governmental agency. This situation is considered a gift of a purely personal and private nature. The accommodations provided to the public employee by a personal friend would be a courtesy extended as a result of a social relationship.

  
Chairman