

ADVISORY OPINION NO. 90-62

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MAY 3, 1990

GOVERNMENTAL BODY SEEKING OPINION

A State Delegate

OPINION SOUGHT

Whether it is a violation of the Act for an elected public official to receive money designated as an honorarium and expenses for his work with a Fresh Air Fund?

OTHER FACTS RELIED UPON BY THE COMMISSION

The Delegate is a Representative for a Fresh Air Fund, which is a non-profit organization. The purpose of the Fund is to provide underprivileged New York City youth with a free two week summer vacation in rural and country areas.

The Delegate's responsibilities as Fund Representative include the recruiting, training and supervising of certain local committees in fulfillment of this program. He also serves as an intermediary between the local committees and the Fund. The requestor coordinates activities such as individual problem-solving, logistics and transportation. For these services the Delegate receives an annual sum in the amount of \$250.00 designated by the Fund as an "honorarium" as well as reimbursement of any expenses incurred.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(c)(3) states in pertinent part that...the acceptance of an honorarium by an elected public official is prohibited...

West Virginia Code Section 6B-2-5(c)(6) states that the Commission by regulation may define further exemptions from this section as necessary or appropriate.

ADVISORY OPINION

Subsection 6B-2-5(c)(3) of the Act states that a public official may not accept an honorarium.

However, the Commission defines "honorarium" as a payment made in recognition of published works, appearances, speeches and presentations and which is not intended as consideration for the value of such services which are nonpublic occupational or professional in nature. These payments are not legally or traditionally required.

In this instance the "honorarium" is issued by a non-profit organization for the Delegate's work at the local level, pursuant to a quasi-employment contract for services performed, and is not associated with or influenced by the Delegate's position as an elected public official.

Furthermore, the Commission finds that although the Fresh Air Fund describes this payment as an honorarium, it does not fall within the definition of such which the Legislature intended to prohibit within the meaning of the Ethics Act.

The Commission would also note that the reimbursement of expenses incurred by the Delegate during his work for the Fresh Air Fund is acceptable, since the expenses were incurred while the Delegate was fulfilling his legal responsibilities with the Fund.

  
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CHAIRMAN