

ADVISORY OPINION NO. 90-86

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

A State Department Supervisor

OPINION SOUGHT

- a. Whether it is a violation of the Act for a State Association to recover costs incurred for sponsoring a conference in conjunction with a State Department?
- b. Whether it is a violation of the Act for a State Association which sponsored a program in conjunction with a State Department to make a profit?
- c. Whether it is a violation of the Act for public employees to attend a conference without charge while other attendees of the conference are charged a fee based on whether they are members or nonmembers of the sponsoring association?
- d. Whether it is a violation of the Act for a State employee to accept an honorarium or remuneration for being a guest speaker at a conference sponsored by an Association?
- e. Whether it is a violation of the Act for public employees to accept meals and beverages from an Association when they participated as guest speakers at an all day conference?

OTHER FACTS RELIED UPON BY THE COMMISSION

An Association sponsored a conference in conjunction with a State Department. There was a great need to provide public training related to regulatory changes. The State, in many instances, lacks sufficient resources for the coordination of such events. Recognized groups and associations which have the resources and networking capabilities are often utilized to assist the State in the production of such conferences.

The Association which sponsored a particular conference was responsible for publishing and circulating the program, arranging for the location and lunch accommodations, setting up of a professional sound system with taping capabilities, copying of printed materials and performing other support services.

Six State employees participated in the program. Three of the state employees were present the entire day and were guests of the Association for lunch but, received no honoraria. Conference attendees were charged varying fees according to whether they were members of the Association which sponsored the conference.

The total attendance at the meeting exceeded 200, most of whom were members of the Association. Eight public employees who did not participate in the program were allowed to attend the program sessions only at no cost. Other State employees, if interested, would have been given equal opportunity and consideration.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(a) states that the provisions of this section apply to all elected and appointed public officials and public employees, whether full or part time, in state, county municipal governments and their respective boards, agencies, departments, and commissions and in any other regional or local governmental agency, including county school boards.

West Virginia Code Section 6B-2-5(b)(1) states that a public official or public employee may not 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 Section 6B-2-5(c)(2) states in pertinent part that...a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person...

(A) Meals and beverages;...

(D) Reasonable expenses for food, travel, and lodging of the official or employee for a meeting at which the official or employee participates in a panel or speaking engagement at the meeting;...

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. The commission shall, by legislative rule, establish guidelines for the acceptance of reasonable honorariums by all other public officials and public employees other than elected public officials.

ADVISORY OPINION

a. As set out in West Virginia Code Section 6B-2-5(a), the Ethics Act only covers public employees and public officials. The Act does not regulate or govern a private Association's activities or whether it may recover costs incurred for sponsoring a conference with a State Department except as it may interface with or directly affect the conduct of public employees or officials.

It is apparent to the Commission that there is a public benefit for an Association to provide training for State employees and others relating to regulatory changes in a specific field.

Therefore, it would not be a violation of the Ethics Act for a private Association to charge fees and to recover costs incurred for sponsoring a conference in conjunction with a State Department. There is no indication that any public employee or official received a direct pecuniary benefit as a result of the Association recovering its costs.

b. As previously noted in paragraph "a" above, a non-governmental Association is not governed or regulated by the Ethics Act. However, a public employee is prohibited by subsection 6B-2-5(b)(1) from intentionally using his or her office or prestige for the private gain of another. There is reason to believe that the State public employees' participation in the program and prestige as speakers contributed to the success of the program and the financial gain of the Association. However, the Commission finds that this was not the type of private gain intended to be prohibited by the Legislature in enacting subsection 6B-2-5(b)(1).

c. The issue addressed here is whether state employees may attend a conference at no charge when other attendees are required to pay a fee based on a sliding scale. The question has been raised whether these public employees have used their position for private gain in violation of subsection 6B-2-5(b)(1).

It is commonly known that state public employees' salaries are not on a comparable level with others in similar positions. If the employees were required to pay the full conference fee they may not have been able to attend. It is to the State's advantage for public employees to have the benefit of training in their fields of employment especially in this instance when the State Department was a conference co-sponsor.

It is the Commission's opinion that although the eight public employees received the benefit of attending the conference and being educated and apprised of the latest regulatory changes to be implemented in their field that was not the type of private gain intended to be prohibited by the Legislature in enacting subsection 6B-2-5(b)(1).

In fact, the Commission considers such training as being necessary to the employees fulfilling their employment responsibilities to the best of their abilities and such education inures to the overall benefit and gain of the State.

d. The issue considered in this question is whether a public employee may receive remuneration or an honorarium for speaking at a conference sponsored by an Association. Subsection 6B-2-5(c)(4) only prohibits an elected public official from receiving an honorarium.

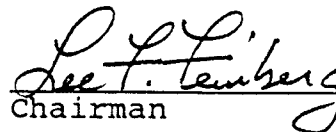
It is the Commission's opinion that a public employee may receive an honorarium for speaking at a conference or program if such sum is reasonable. The guidelines to be considered in determining reasonableness are:

1. the length of time of the employee's presentation,
2. the amount of preparation or research required to make such presentation,
3. the usual and customary amounts received by others in the field for a similar presentation,
4. the employee's background, training, experience, and education.

The Commission would further note that when a public employee receives an honorarium or remuneration he must take annual leave or leave without compensation during the time he is away from his public employment to make such presentation or "preparing" for such presentation.

e. Subsection 6B-2-5(c)(2) of the Act allows a public employee to accept certain gifts, including meals and beverages, and reasonable expenses for food, travel, and lodging of the employee for a meeting at which he participates as a speaker.

Therefore, it would not be a violation of subsection 6B-2-5(c)(2) of the Act for public employees and officials to be guests of an Association for lunch, since meals and beverages fall within the list of acceptable gifts as established by the Act.

  
Chairman