

ADVISORY OPINION NO. 90-105

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JULY 12, 1990

GOVERNMENTAL BODY SEEKING OPINION

A State Senator

OPINION SOUGHT

- a. Whether it is a violation of subsection 6B-2-5(b)(1) of the Act for a State Senator to receive private gain by participating in promotional programs sponsored by a hotel when the official is conducting State business after October 1, 1989?
- b. Whether it is a violation of subsection 6B-2-5(d)(1) of the Act for a Legislator to contract with State government?

OTHER FACTS RELIED UPON BY THE COMMISSION

Many hotels and motels give public officials bonus points for staying overnight when they are there performing business on behalf of the State. These points may be accumulated for free stays at hotels or other benefits. These facilities also give points to other guests, who are not state employees or officials if they participate in their incentive programs.

The Senator's expenses are paid for by the State while the Legislature is in session, when participating in interim meetings, or conducting other official State business. However, the State's allotted per diem (\$40 per day for lodging) does not pay the entire hotel costs and the Senator pays any additional money charged by the Hotel (\$43 per day is the room rate).

The Senator received 4,775 points during the 1990 Legislative session. The requestor also received additional points for referring prospective clients to the hotel. The Senator's total bonus points as a result of this hotel promotion are 141,197.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that...a public official may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain...

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no elected public official may be a party to or have an interest in the profits or benefits of a contract which such official or employee may have direct authority to enter into, or over which he or she may have control: Provided, however, that nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body...

ADVISORY OPINION

a. It is the Commission's opinion that it would be a violation of subsection 6B-2-5(b)(1) of the Act for a public official (a State Senator) to use her office for her own private gain. That includes receiving bonus points for free accommodations and other benefits while conducting official business at the State's expense. The Commission would note that this applies only to the bonus points (4,775) accumulated after October 1, 1989 by the State Senator while conducting business at the State's expense.

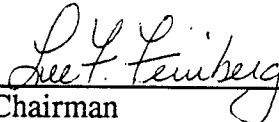
Any bonus points accumulated at the Senator's private expense may be used for her private benefit. The Senator would need to calculate the amount of bonus points accumulated as a result of the additional money (approximately \$3 per day) she pays individually to stay at this particular hotel.

Further, the Commission would refer the Senator to Advisory Opinion #90-100 which allows public officials and employees to accumulate bonus points to be used for subsequent State travel or accommodations. This system allows the State to receive the benefits of the "bonus points" that were paid for with the state's money.

However, the Commission would note that any bonus points accumulated for referring prospective clients would belong to the public official individually and would not be in violation of subsection 6B-2-5(b)(1) of the Act since such accumulation would be independent of the individual's public position.

b. The State Senator asks for clarification regarding Legislators contracting with State Government. When enacting the Ethics Act the Legislature included a proviso in subsection 6B-2-5(d)(1) which states that nothing contained within the Act shall be construed to prohibit a Legislator from contracting with any governmental body. Therefore, it would not be a violation of the Act for a State Legislator to contract with any branch or Department of State Government.

However, a State Legislator should be mindful of subsections 6B-2-5(b)(1) and 5(e) when contracting with the state. Subsection 6B-2-5(b)(1) prohibits a State Legislator from using his or her office or prestige for private gain (i.e. obtaining a state contract based on his or her elected position). Also, subsection 6B-2-5(e) prohibits a public official from knowingly or improperly disclosing any confidential information acquired by him or her in the course of his or her official duties or to further his or her personal interests



Chairman