

ADVISORY OPINION NO. 90-113

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JULY 12, 1990

GOVERNMENTAL BODY SEEKING OPINION

Director of Purchasing and Materials Management for a State University

OPINION SOUGHT

Whether it is a violation of the Act for individuals from various State Colleges or Universities who participate in purchasing decisions to receive an expense paid trip from a vendor to visit a carpet manufacturers' production facility located in Dalton, Georgia?

OTHER FACTS RELIED UPON BY THE COMMISSION

The State has a 5-year carpet contract for use by all State Colleges and Universities. Two years ago this carpet manufacturer received the five year mandatory, open-end University carpet contract, which requires all departments to purchase carpet from this manufacturer. The contract is subject to renewal annually. The manufacturer which provides all lines of carpets listed on the contract offers a cooperative promotional program to bring individuals who make purchases to its production facility in order to demonstrate and explain how various carpets are manufactured.

The program includes the vendor paying the individuals' travel, lodging and meals. Typically the individuals fly down to the facility one day, stay overnight, visit the carpet mill the next day and return home that afternoon. The program is designed for purchasing agents and other individuals who make the carpet selections and is considered strictly an educational experience. The benefit to the State employees is having the opportunity to closely examine the carpet lines and the different features of each.

Regardless of whether these individuals are allowed to make this trip, all carpet selections must still be made from this manufacturer and this contract. Paying the individual's expenses is a common practice by the companies in the carpet industry.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(b)(1) states that....a public employee 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 or that of another person.

West Virginia Code Section 6B-2-5(c)(1) states in pertinent part that...no employee may knowingly accept any gift, directly or indirectly 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;

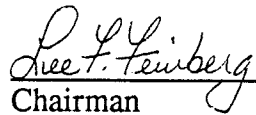
(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his official duties.

West Virginia Code Section 6B-2-5(c)(2) states in pertinent part that...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. The provisions of subdivision (1) of this subsection do not apply to:

(A) Meals and beverages;...

ADVISORY OPINION

In light of the requestor's assertion that the University must purchase carpet from the manufacturer awarded the contract, it is the Commission's opinion that the on-site review of the carpet mill is part of the employee's job training and education and is not a "gift" within the meaning of the Act. The Commission recognizes that the employees will be receiving free round trip air-fare to Georgia, meals and lodging but considers these benefits to be part of their job responsibilities and not personal gifts or the receipt of private gain. Therefore, it would not be a violation of subsection 6B-2-5(c)(1) or 6B-2-5(b) of the Ethics Act.


Chairman