

ADVISORY OPINION NO. 90-151

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON SEPTEMBER 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

A County Board of Education Member

OPINION SOUGHT

Whether it is a violation of the Ethics Act for County Board of Education members to receive free admission to all County school activities?

OTHER FACTS RELIED UPON BY THE COMMISSION

It is the duty of the County Board of Education members to oversee all County school functions (including extracurricular activities) as part of their job responsibilities.

A County Board of Education established a County-wide policy which permits all school employees to receive free admission to all school activities, such as plays, band concerts, athletic events and other extracurricular functions.

The County Board of Education members would like to accept the same courtesy extended to County school employees but have not taken advantage of the free admission policy because they are concerned about the ramifications which could occur pursuant to the Ethics Act.

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...The performance of **usual and customary duties associated with the office**...or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

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

- (B) Is engaged in activities which are regulated or controlled by his or her agency; or
- (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...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:

(C) Unsolicited gifts of nominal value...

(E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;...

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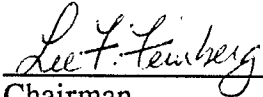
School Board Members

Pursuant to subsection 6B-2-5(c)(2) of the Ethics Act a public official may accept certain gifts from persons they regulate or who have a financial interest that may be affected by the performance of their job. This provision includes free admission or tickets to school events that are cultural or charitable and may be accepted by Board members from persons (such as principals or teachers) who are regulated by the County Board of Education or have financial interests that may be affected by the Board members' performance of their official duties.

However, tickets to **athletic events** are not included in any of the acceptable categories which were established by the Act in subsection 6B-2-5(c)(2). Therefore, it would be a violation of subsection 6B-2-5(c)(2) for County Board of Education members to accept free tickets or admission to County **school athletic activities** as previously decided by the Commission in Advisory Opinion 89-40.

School Board Employees

The Commission would note although the requestor did not seek an opinion regarding school employees' acceptance of tickets or free admission to all school related activities (including athletic events) it has determined that benefits conferred on public employees by their employer as compensation are neither "gifts" nor "private gain" within the meaning of the Ethics Act and the acceptance of such are therefore not prohibited by subsections 6B-2-5(b)(1) or 6B-2-5(c).



Chairman