

ADVISORY OPINION NO. 90-161

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON OCTOBER 4, 1990

GOVERNMENTAL BODY SEEKING OPINION

A City Attorney on behalf of a City Council member

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a City Council member to receive free tickets to a private University's basketball games in return for his efforts in selling tickets for these games to the general public?

OTHER FACTS RELIED UPON BY THE COMMISSION

The City Council member has voluntarily sold tickets to basketball games for a private University for a number of years. As a way of thanking him for his efforts, the private school has provided the City Council member with four free "gold seat" season tickets valued at \$50 dollars each and approximately twenty free admission tickets, currently valued at \$25 each. This amounts to a total value of approximately \$700.

The private University's Vice President has stated that this reward is available to all persons who wish to participate in the incentive program, by selling a certain number of tickets.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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

West Virginia Code Section 6B-2-5(c)(1) states in pertinent part that...a public official...may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family...**Provided**, That no public official...employee may solicit for a charitable purpose any gift from any person who is also an official or employee and whose position as such is subordinate to the soliciting official or employee...No official... may knowingly accept any gift, directly or indirectly, from...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;
- (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.

ADVISORY OPINION

Gifts

Pursuant to subsection 6B-2-5(c)(1) of the Ethics Act a public official may not accept gifts from a lobbyist or any person who is doing or seeking to do business of any kind with his agency, a person who is engaged in activities which are regulated or controlled by his agency or from any person who 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.

The Commission finds that receiving free tickets to the basketball games from a private University in return for his efforts in selling tickets for these games to the general public would not be considered a "gift" under the meaning of the Act, since it is actually compensation for services rendered which are not connected with his public employment.

Solicitation

The Commission would remind the City Councilman that even though subsection 6B-2-5(c)(1) allows for the acceptance of certain gifts, a public official can not solicit (selling tickets to sporting events would be considered solicitation), unless it is for a charitable purpose, with no resulting pecuniary benefit to the public official and not soliciting a subordinate employee. Therefore, the public official may not solicit or directly ask subordinate City employees to purchase such tickets.

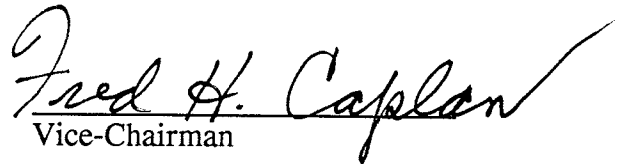
"Solicitation" is defined as seeking to obtain something by direct persuasion or by petitioning persistently.

Private Gain

Also, the City Councilman should be mindful of subsection 6B-2-5(b)(1) of the Ethics Act which prohibits a public official from intentionally and knowingly using the prestige of his public office for private gain. There is no evidence to suggest that the City Councilman receives "free tickets" as a result of his position or prestige.

Selling basketball tickets to the general public in order to receive free tickets from the private University would not be a violation of subsection 6B-2-5(b)(1) since the University's incentive program is available to anyone who wishes to participate and the receipt of these free tickets does not relate to the Councilman's public position.

Therefore, it would not be a violation of subsections 6B-2-5(b)(1) and 6B-2-5(c)(1) of the Ethics Act for a City Councilman to receive free tickets to a University's basketball games in return for his efforts in selling tickets for these games to the general public.


Vice-Chairman