

ADVISORY OPINION NO. 90-169
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON NOVEMBER 1, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Prosecuting Attorney

OPINION SOUGHT

- a. Whether it is a violation of the Ethics Act for certain County officials to attend a pre-closing in New York on the refinancing of certain industrial bonds, when the Company refinancing the bonds would be paying their expenses?
- b. Whether the County officials' expenses for such trip should be reported on the officials' Financial Disclosure Statement?

OTHER FACTS RELIED UPON BY THE COMMISSION

A Company is planning to refinance certain industrial bonds which have been issued through a County Commission. Certain County officials' signatures are required on the documents at the closing.

These County officials include the County Commission President and the County Clerk.

The pre-closing and closing on the refinancing of the Bonds will be held in New York. Voluminous and complex legal documents are compiled that actually require two "closings" (pre-closing and closing). The pre-closing takes place prior to the actual closing, giving time for corrections and additions to be made. The County Prosecuting Attorney must be present to review and authorize these changes. Signatures of the Clerk and the President of the County Commission must be on the bonds and is made with a facsimile machine at a printing firm, allowing them to sign in hours what would otherwise take days to sign.

The requestor has stated that these proceedings can not take place within the County or even the State since it would be impractical to hold them any place other than where the brokerage firm, bonding firm, underwriters and printing firm are located.

It has been proposed by the Company that all the members of the County Commission, the County Clerk and the Prosecuting Attorney attend the pre-closing in New York at the Company's expense.

Since any direct financial benefit from the issuance of the bonds would inure to the benefit of the Company, the Company has agreed to pay the costs and expenses incurred by the County officials in attending the pre-closing and closing in New York.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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

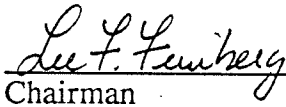
ADVISORY OPINION

a. The Commission recognizes that as a result of the trip the County officials will be receiving free transportation, meals and lodging but considers these benefits to inure to the County. It is the Commission's opinion that the expense paid trip to New York to attend a bond pre-closing and closing, which can not be conducted locally, is part of the public officials' job responsibilities on behalf of the County and would not be considered a gift within the meaning of the Act.

Therefore, it would not be a violation of subsection 6B-2-5(c)(1) of the Ethics Act for **official representatives** of the County Commission to attend a pre-closing and closing on the refinancing of certain industrial bonds, when the Company refinancing the bonds is paying their expenses.

However, the Commission would note that the requester could not provide a logical reason that would allow for the entire County Commission to attend. The requestor stated that the Company extended the invitation to all County Commission members out of courtesy. The Commission has limited its approval of the expense paid trip to only the County officials whose attendance and signature at the pre-closing and closing is vital since they are the individuals essential to the completion of the transaction. Based on the facts presented this would include the County Commission President, the County Clerk and the Prosecuting Attorney.

b. Public officials and public employees must report all gifts received from persons having a direct and immediate interest in a governmental activity over which the person filing the statement has control which has an aggregate value over \$100. The Commission has determined that the payment of expenses by a Company for County Commission members to travel to New York to a Bond closing would not be a gift as meant by the Act. Therefore, since the reimbursement of expenses incurred is not considered a gift, the County public officials need not list the value of such expense paid trip to New York on the financial disclosure statement.


Chairman