

ADVISORY OPINION NO. 90-175
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON NOVEMBER 1, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Deputy Clerk

OPINION SOUGHT

- a. Whether it is a violation of the Ethics Act for public employees in the County Clerk's Office to voluntarily contribute to a fund which would be used to purchase a Christmas gift for their supervisor?
- b. Whether it is a violation of the Ethics Act for public employees in the County Clerk's Office to exchange Christmas gifts?

OTHER FACTS RELIED UPON BY THE COMMISSION

Public employees in the County Clerk's Office would each like to contribute \$5.00 to a fund which would be used to purchase their supervisor a Christmas gift. The monetary value of the gift would be over \$20.00 since, there are seventeen employees in the office. Also, public employees in the County Clerk's Office would like to exchange Christmas gifts with each other.

A law firm in the County would like to purchase a gift such as a coffee pot or toaster for the County Clerk's Office. This gift would belong to the office and would be for the entire office's use and not limited to any one individual.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(c)(1) states in pertinent part that...a public official or public employee 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:...No official or 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;
- (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 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. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions...of this subsection do not apply to:

- ...(F) Gifts that are purely private and personal in nature...

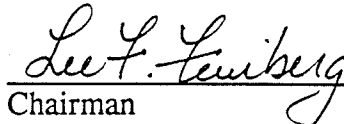
ADVISORY OPINION

a. A public official or public employee may not solicit any gift, except for a charitable purpose. The Commission does not consider the purchase of a Christmas gift for the County employees' supervisor to be a charitable purpose. Consequently, the County employees may not solicit monetary contributions for a supervisor's gift. The Commission has defined "solicitation" as seeking to obtain something by direct persuasion or by petitioning persistently.

However, as long as employees are not solicited but wish to voluntarily participate in the purchase of a supervisor's Christmas gift that would not be a violation of subsection 6B-2-5(c). Employee participation in the project must be **voluntary and without any coercion**.

The Commission would note that the supervisor should not be informed as to which employees elected not to contribute to the gift fund nor, the "amount" of employees' contributions who participated in the purchase of the gift.

b. Pursuant to subsection 6B-2-5(c)(2) of the Ethics Act a public official may accept a gift which is purely personal and private in nature. The Commission assumes that any presents exchanged between the public official and employees in the County Clerk's Office would fall within such category. Any employee who wishes to participate in a voluntary Christmas gift exchange with others may do so.


Chairman