

ADVISORY OPINION NO. 89-12
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
OCTOBER 5, 1989

GOVERNMENTAL BODY SEEKING OPINION

Individual member of the planning and steering committee for the American Society of Legislative Clerks and Secretaries (hereinafter referred to as Society)

OPINION SOUGHT

1. "May a legislative employee solicit a monetary gift, if the gift is used strictly for providing meals and beverages for a seminar and conference? Would such a gift fall within the exceptions of subdivisions (c)(2)?"
2. "May a legislative employee request a business entity to independently set up a "hospitality suite" or otherwise provide meals and beverages to persons attending the meeting, including employees of the state, under the meals and beverages exception?"

FACTS RELIED UPON BY THE COMMISSION

Several persons employed by the House of Delegates and the State Senate as legislative staff are also members of the Society. The National conference of State Legislatures in cooperation with the Society are planning their annual meeting and professional development seminar to be held in West Virginia in the fall of 1990. Those attending would include principal clerks and secretaries and their staffs from legislatures throughout the country.

Most of the organizational work would be done by West Virginia legislative employees as the host state. The past practice in other states has been for members of the Society to solicit gifts from non-members to help defray the costs of the annual meeting. The purpose of this fundraising is to enable the host state to extend hospitality to visiting members from other states, and to "showcase" the host state through tours and other events which could not otherwise be offered without outside financial assistance.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(c)(1) states that an official or employee of the state may not solicit any gift.

West Virginia Code Section 6B-2-5(c)(6) allows the commission by regulation to define further exemptions from this section as necessary or appropriate.

West Virginia Code Section 6B-2-5(c)(1) also states in reference to the "acceptance" of gifts that 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.

(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 that notwithstanding the provisions of subdivision (1) of this section, 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 affect his or her impartiality and independent judgment. The provisions of subdivision (1) do not apply to:

(A) meals and beverages...

ADVISORY OPINION

1. A public employee may not solicit any gift. However, the commission is empowered with the ability to define further exemptions from this section as necessary or appropriate.

The facts set forth indicate the solicitation of gifts and financial contributions are necessary to defray the costs of the annual meeting and professional development seminar for the national conference of the Society.

The Act clearly states that an employee may not "solicit any gift, but certain unsolicited gifts may be accepted. The exceptions (i.e. meals and beverages) referred to in subdivision (c)(2) apply to the "acceptance" of an unsolicited gift.

2. When a legislative employee "requests" a business entity to "set up a hospitality suite" that is a solicitation and no public employee may solicit any gift.

Lee F. Lemberg

Chairman