

ADVISORY OPINION 89-46

ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 7, 1989

GOVERNMENTAL BODY SEEKING OPINION

President of a state association

OPINION SOUGHT

Whether it is a violation of the Act for various businesses or associations to sponsor events related to the American Society of Legislative Clerks and Secretaries conference?

OTHER FACTS RELIED UPON BY THE COMMISSION

Many association executives would volunteer to find sponsors for such events or conferences if permitted. The President of the association, is willing to assume the responsibility of finding sponsors for the conference and certain receptions if it is not a violation of the Act to do so.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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

not apply to:

(A) Meals and beverages;

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The Ethics Act speaks to the solicitation and acceptance of gifts by public officials or public employees. It does not proscribe conduct for other individuals except indirectly in subsection (c)(2) which allows public officials or public employees to accept a gift with a presumption that such acceptance does not impair the impartiality and independent judgment of such person.

However, such presumption may be overcome by direct evidence that the gift did impair the impartiality and independent judgment of the person or was offered with the intent to do so. If such were shown to be the case the intent would be a violation of the Act.

Furthermore, subsection (c)(1) does not apply to the acceptance of meals and beverages by public employees and officials.

Therefore, it would not be a violation of subsection (c)(1) for individuals who are not public employees nor public officials to provide gifts (obtaining donations for the conference and reception) to attendees of the conference, including public employees as long as such gift is not intended and does not impair the impartiality and independent judgment of the public employees.



Chairman