

ADVISORY OPINION NO. 89-53

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 7, 1989

GOVERNMENTAL BODY SEEKING OPINION

State Law and Legislation Chairman for an Association

OPINION SOUGHT

Whether it is a violation of the Act for an Association to host teas or coffees and invite their local and state legislators to attend?

OTHER FACTS RELIED UPON BY THE COMMISSION

The association is considering having teas or coffees which either the association or individual members would host and inviting their local or state legislators to attend. They plan to provide coffee, tea, soft drinks, cookies, or doughnuts. The purpose is for the association's members and their spouses to meet and get acquainted with the legislators.

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. 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 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 a 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

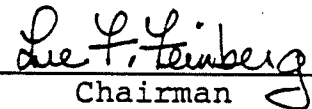
gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

(A) Meals and beverages.

ADVISORY OPINION

The Act specifically prohibits a legislator or other regulated person from soliciting any gift. However, certain gifts (including meals and beverages) may be accepted by Legislators as long as the gift does not or is not intended to impair the impartiality and independent judgment of the public official.

Therefore, it is the Commission's opinion that it is not a violation of the Act for legislators to attend teas or coffees sponsored by the Association since the provisions of subdivision (c)(1) and (c)(2)(A) relating to acceptance of gifts by public to officials do not apply to meals and beverages.


Chairman