

ADVISORY OPINION NO. 89-55

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 7, 1989

GOVERNMENTAL BODY SEEKING OPINION

A member of the Ethics Committee of the West Virginia Society of Association Executives (hereafter referred to as Society)

OPINION SOUGHT

1. Whether individual members who participate without compensation and without making any expenditures in the activities set forth below are required to register and report as lobbyists?
2. Whether it is a violation of the Act for a paid lobbyist to participate in the activities set forth below?
3. Whether it is a violation of the Act for the various associations to provide meals and beverages to legislators in the following scenarios:
  - a. Regional legislative meetings-held for the purpose of presenting the Association's legislative programs to legislators both orally and through the distribution of written literature. Each meeting would be preceded or followed by a meal or refreshments paid for by the sponsoring association.
  - b. Legislative receptions-held during the legislative session to provide an opportunity for interchange of ideas among large numbers of association members and legislators. Food and refreshments paid for by the sponsor would normally be served at these receptions.
  - c. Banquets-featuring speakers or panels composed of legislators or association members. The primary purpose is to stimulate thinking on issues of concern to members and ascertain legislator's views on such issues. A meal and refreshments would be provided by the association.
  - d. Issue Briefings-held for members and legislators at a breakfast or luncheon meeting during the legislative session. Speakers would include legislators who brief members on legislative activities. A meal or refreshments would be provided.
  - e. Individual dinners-members of the society meet and have dinner with individual members regarding issues of relevance to their Association, both when the legislative session is convened and when it is not. The purpose of such meeting is to convey the attitude of each association's members regarding issues in general and on occasion, legislative initiatives. The meals would be paid for by

the sponsoring association. Having discussions during meal times are necessary for the parties to conveniently meet.

PERTINENT FACTS RELIED UPON BY THE COMMISSION

The Society is comprised of approximately 85 executives employed by various associations who hold exemptions under 501(c) of the Internal Revenue Code. Associations which employ Society members represent commercial, manufacturing, business--league and non-profit groups within the state.

Some members of the Society perform activities which can be defined as "lobbying" under the Act. These members recognize their legal obligations to register and comply with all rules and regulations in connection with the conduct of their lobbying activities.

Individual members of the associations would be participating in a limited fashion as set forth above.

STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-3-1(7)(A) states that "Lobbyist" means a person who, through communication with a government officer or employee, promotes, advocates or opposes or otherwise attempts to influence:

(i) The passage or defeat or the executive approval or veto of any legislation which may be considered by the Legislature of this state; or

(ii) The adoption or rejection of any rule, regulation, legislative rule, standard, rate, fee, or other delegated legislative or quasi-legislative action to be taken or withheld by any executive department.

West Virginia Code 6B-3-1(4) states in pertinent part that "Government officer or employee" means a member of the legislature, a legislative employee, the governor and other members of the board of public works, heads of executive departments, and any other public officer or public employee under the legislative or executive branch of state government who is empowered or authorized to make policy and perform nonministerial functions...

West Virginia Code 6B-3-1(7)(B) states in pertinent part that the term "lobbyist" shall not include the following persons, who shall be exempt from the registration and reporting requirements set forth in this article, unless such persons engage in activities which would otherwise subject them to the registration and reporting requirements:

(iii) Persons who lobby without compensation or other consideration for acting as lobbyists, when such persons make no expenditure for or on behalf of any government officer or employee in connection with such lobbying, are exempt. The exemption

contained in this subparagraph (iii) is intended to permit and encourage citizens of this state to exercise their constitutional rights to assemble in a peaceable manner, consult for the common good, instruct their representatives, and apply for a redress of grievances. Accordingly, such persons may lobby without incurring any registration or reporting obligation under this article. Any person exempt under this subparagraph (iii) may at his or her option register and report under this article.

West Virginia Code 6B-3-1(7)(B)(iv) states in pertinent part that persons who lobby on behalf of a non-profit organization with regard to legislation, without compensation, and who restrict their lobbying activities to no more than twenty days or parts thereof during any regular session of the Legislature, are exempt...

West Virginia Code 6B-3-7(2)(F) states in pertinent part that a person required to register as a lobbyist shall not give a gift to any government officer or employee in excess of or in violation of any limitations on gifts...or give any gift, whether lawful or unlawful, to a government officer or employee without such government officer or employee's knowledge and consent.

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)(A) states in pertinent part... 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;

West Virginia Code 6B-3-4(e) states in pertinent part that if, ... the lobbyist made expenditures, other than for travel, food, lodging and entertainment...which total more than five hundred dollars to or on behalf of any particular government officer or employee, the lobbyist shall report the name the government officer or employee to whom or on whose behalf the expenditures were made, the total amount of the expenditures, and subject matter of the lobbying activity if any, ...no portion of the amount of an expenditure for a dinner, party, or other function sponsored by a lobbyist or a lobbyist's employer need be attributed to or counted toward the reporting amount of five hundred dollars...if the sponsor has invited to the function all the members of (1) the Legislature, (2) either house of the Legislature, (3) a standing or select committee of either house, or (4) a joint committee of the two houses of the Legislature. However, the amount spent for such function shall be added to other expenditures for the purpose of determining the total amount of expenditures reported under subsection (b) of this section.

#### ADVISORY OPINION

1. The first question posed is whether individual members of an association who do not receive compensation nor make any expenditures on behalf of any governmental officer or employee must register and comply with reporting requirements as set forth in the Act.

A lobbyist is one who through communication with a government officer or employee promotes, advocates, opposes or otherwise attempts to influence: (1) the passage or defeat or the executive approval or veto of any legislation which may be considered by the legislator or (2) the adoption of or rejection of any rule, legislative rule or other delegated or quasi-legislative action to be taken or withheld by an executive department.

It is not apparent from the facts presented whether the individual member is communicating with a governmental officer or employee, who is a person defined in part in subsection 6B-3-1(4) as a member of legislature, a legislative employee, a public officer, a public employee under the Executive branch empowered to make policy and perform non-ministerial duties, or other.

If the individual member is communicating with such governmental officer or employee and attempting to influence him in a manner set forth in subsections 6B-3-1(7)(A)(i) and (ii) he is acting as a lobbyist.

However, some lobbyists are exempt from registration and reporting requirements set forth in the Act. This specifically includes persons who lobby without compensation or other consideration when such persons make no expenditure for or on behalf of any governmental officer or employee. (See, 6B-3-1(7)(B)(iii))

It appears in the scenarios presented that the individual member acting without compensation or other consideration who makes no "personal" expenditures for or on behalf of any governmental employee or officer is exempt.

Also, subsection 6B-3-1(7)(iv) speaks to individual members representing a non-profit corporation, which may be applicable to some associations. This provision states that persons who lobby on behalf of a non-profit corporation with regard to legislation without compensation and who restrict their lobbying activities to no more than twenty days or parts thereof during any regular session of the Legislature, are exempt from registering and reporting.

Therefore, it is the Commission's opinion that individual members who receive no compensation or other consideration and make no expenditures are exempt from registering and reporting under the Act.

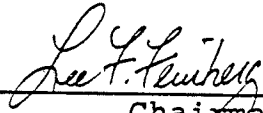
2. It is the Commission's opinion that it is not a violation of the Act for lobbyists receiving compensation to participate in the five scenarios listed above in opinion sought.

However, paid lobbyists should be mindful of reporting and other requirements as set forth in subsection 6B-3-7(2)(F) which states that a lobbyist shall not give a gift to any government officer or employee in excess of or in violation of any limitations on gifts set forth in this chapter (See 6B-2-5(c)), or give any gift, whether lawful or unlawful, to a government officer or employee without such government officer or employee's knowledge and consent.

Also, subsection 6B-3-4(e) sets forth the reporting requirements for food expenditures in that during the period covered by the report, no portion of the amount of an expenditure for a dinner, party, or other function sponsored by the lobbyist's employer need be attributed to or counted toward the reporting amount of five hundred dollars if the sponsor has invited all members of the (1) Legislature, (2) either house of the Legislature, (3) a standing or select committee of either house, or (4) a joint committee of the two houses of the Legislature. However, such amount spent shall be added to other expenditures and reported as required by subsection 6B-3-4(b).

3. The next question presented concerns the legality of the various Associations providing meals and beverages to legislators.

Subsections 6B-2-5(c)(1) and (2)(A) allow a legislator to receive meals and beverages as long as the gift does not or is not intended to impair the impartiality and independent judgment of the person receiving the gift.

  
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Chairman