

ADVISORY OPINION NO. 89-38

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 legislators to attend conferences where the sponsors of the conferences have paid all the expenses (air travel, lodging, golf, etc...)?

OTHER FACTS RELIED UPON BY THE COMMISSION

There have been occasions in the past when the President of the association and certain legislators have been invited to attend out of state conferences focusing on and promoting certain legislative issues. The sponsors of the conferences have paid all expenses including air travel, lodging, golf, etc.

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:

(1) Is doing or seeking to do business of any kind with his or her agency.

(2) Is engaged in activities which are regulated or controlled by his or her agency.

(3) 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 pertinent part that a person who is a public official...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;
- (D) Reasonable expenses for food, travel, and lodging of the official or employee for a meeting at which the official or employee participates in a panel or speaking engagement at the meeting;

ADVISORY OPINION

First, it is the Commission's opinion that for a group or association to pay a legislator's air fare, travel, lodging and golf fees at a conference would constitute a gift to the Legislator.

Subsection (c)(1) of the Act states in part that no public official may knowingly accept any gift directly or indirectly from any person whom the employee knows or has reason to know 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.

However, reasonable expenses for food, travel, and lodging of an official to attend a conference are permitted under the Ethics Act if the official participates in a panel or has a speaking engagement at the meeting. There is no indication that this is the case here.

West Virginia Code subsection 6B-2-5(c)(2) carries with it a presumption that "acceptance" of an unsolicited gift does not impair the impartiality and independent judgment of such person. However, this presumption may be rebutted by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the gift was offered with the "intent" to impair his or her impartiality and independent judgment.

The question before the Commission is speculative and vague in nature since there is no specific conference or legislators named. Therefore, each case before the Commission would turn on its own set of facts and the intent and purpose with which the gift was offered and whether such gift affected the legislator's impartiality and independent judgment would be specific matters the Commission would consider in rendering an opinion.

  
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Chairman