

ADVISORY OPINION NO. 89-97

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 22, 1989

Governmental Body Seeking Opinion

A County Superintendent of Schools

Opinion Sought

Whether it is a violation of the Ethics Act for a member of the Board of Education to receive an honorarium or gift for making a presentation.

Other Facts Relied Upon By The Commission

A County Board of Education member chairs a community organization and often addresses other community groups. The member on occasion receives an honorarium or gift from the group in appreciation of his presentation.

Pertinent Statutory Provision Relied Upon By The Commission

West Virginia Code 6B-2-5(c)(1) states in pertinent part that a public 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 pertinent part that...the provisions of subdivision (1) of this subsection do not apply to:

(B) Ceremonial gifts or awards which have insignificant monetary value;

(C) Unsolicited gifts of nominal value or trivial items of informational value;

(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;

West Virginia Code 6B-2-5(c)(3) states in pertinent part that the acceptance of an honorarium by an elected public official is prohibited...

Advisory Opinion

Subsection (c)(2) of the Ethics Act permits the acceptance of certain gifts that is, ceremonial gifts or awards or unsolicited gifts of nominal value. Also, a public official may receive reasonable expenses for food, travel and lodging for a meeting at which the official speaks or a panel in which he participates.

A public official may accept such gift described above and there shall be a presumption that the receipt of such a gift did not impair the impartiality and independent judgement of that person. This presumption may be rebutted by direct evidence to the contrary and if so, this would constitute a violation of the Act.

However, subsection (c)(3) prohibits the acceptance of an "honorarium" by an elected official.

Therefore, if an honorarium (which the Commission defines as being monetary) is given that would not be permissible and would constitute a violation of subsection (c)(3) of the Act.

This opinion is not changed by the fact that this official would receive the honorarium or gift on behalf of the organization of which he is a member.



Chairman