

ADVISORY OPINION NO. 89-128

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON FEBRUARY 1, 1990

GOVERNMENTAL BODY SEEKING OPINION

A County Prosecuting Attorney

OPINION SOUGHT

Whether it is a violation of the Act for law enforcement officers to attend a seminar in another state at a Corporation's expense?

OTHER FACTS RELIED UPON BY THE COMMISSION

Each year a Corporation allows its railroad police department to use a Game Preserve for the purpose of presenting an Operation Lifesaver and Hazardous Materials Seminar for state and local law enforcement officials. The objective of the seminar is to make law enforcement officials more cognizant of the loss of life occurring at railroad grade crossings and how the officials can work together to combat the problem. The programs that have helped to reduce the loss of life in various states are discussed and the law enforcement officials are made aware of upcoming safety programs and/or promotions soon to be implemented.

Possible train derailments and/or hazardous material spills are also addressed with suggestions being offered to the law enforcement officials as to what the proper procedures should be during these times of crisis. Emphasis is placed on the possible consequences of improper action during emergency responses to a train derailment and/or hazardous material spill.

During their free time attendees are permitted to hunt, fish or use any of the preserve's various facilities. Attendees also spend a great deal of time exchanging information with other law enforcement officials and establishing contacts with police agencies throughout the country. These contacts often prove helpful in law enforcement's war against the criminal element.

The 80 to 90 participants in the seminar are flown by Corporate planes to the Preserve. The participants, all law enforcement officials, reside in cabins during their two day stay with meals (buffet-style) being served at the main lodge. Participants in the seminar are not charged for transportation, lodging or meals.

Participants in the seminar are the top departmental officers designated to represent their department at the function. The invitation is always extended to the top officer for reasons of protocol and to make certain the invitee is not in violation of departmental policy.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(c)(1) states in pertinent part that... an employee of the state may not solicit any gift. No employee may knowingly accept any gift, directly or indirectly, from any person whom the employee knows or has reason to know:

(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... a person who is a 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:

(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)(6) states in pertinent part that... the commission by regulation may define further exemptions from this section as necessary or appropriate.

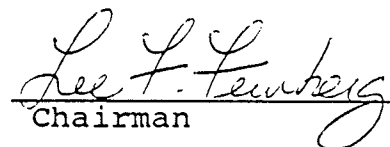
ADVISORY OPINION

Subsection 5(c)(1) of the Ethics Act prohibits a public employee from accepting gifts from anyone engaged in activities which are regulated or controlled by his agency or from anyone who has financial interests which may be substantially and materially affected in a manner distinguishable from the public generally, by the performance or nonperformance of the public employee's duties. It is clear that the corporation falls within such category.

The Legislature in subsection 5(c)(2) allowed for the acceptance of certain gifts. These gifts are afforded a presumption that the acceptance does not impair the impartiality and independent judgment of such person. Reasonable expense for food, travel and lodging for a meeting at which the official or employee participates in a panel or speaking engagement at the meeting are afforded this presumption.

However, the attendees of this seminar are not going to participate in the form of a panel or speaking engagement. Therefore, it would be a violation of subsection 5(c)(1) of the Act for the Corporation to provide free food, lodging and transportation to the law enforcement officers at the seminar.

However, subsection 5(c)(6) provides that the Commission may by regulation, define further exemptions from this section as necessary or appropriate. We understand the purpose to be to promote public safety in West Virginia and to assist in law enforcement and that the seminar would not otherwise be conducted without the Corporation's payment of expenses. Therefore, the Commission finds it necessary and appropriate and hereby grants the law enforcement officers an exemption to attend the seminar sponsored and paid for by the Corporation.


Chairman