

**ADVISORY OPINION NO. 96-07**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON MARCH 7, 1996**

**PUBLIC SERVANT SEEKING OPINION**

A Legislator

**OPINION SOUGHT**

Is it a violation of the Ethics Act for a public official to accept a film cassette from a non-profit Corporation?

**FACTS RELIED UPON BY THE COMMISSION**

A private, non-profit Corporation was established to develop a film history of the State of West Virginia. The Legislature appropriated approximately one-third of the money needed for this project.

Members of the Corporation's Board of Directors also solicited donations from numerous persons including corporations, labor organizations, the federal government and private foundations. Several State Agencies were represented in this project as members of the Corporation's Board of Directors. The Corporation plans no further projects and does not anticipate receiving future grants from the Legislature.

The film was completed and it aired to the public statewide on local public television stations. The Corporation also provided a copy of the film to all schools in the State, every eighth grade teacher of West Virginia History within the State, and each public library. The Corporation also provided film cassettes to all major contributors to the project to serve as a report on a project they supported. These major contributors were also allowed to purchase extra copies at cost, i.e. \$20.00. Copies were also supplied to the sources of governmental funding: the State Congressional Delegation, the Governor, State officials involved with the project and members of the Legislature. Copies are offered for private sale at \$79.95 each.

**PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

West Virginia Code 6B-2-5(c)(1) states in pertinent part that...a public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: **Provided**, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position as such is subordinate to the soliciting official or employee: **Provided, however**, That

nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or 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; or
- (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...Notwithstanding the provisions of subdivision (1) of this subsection, 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.... The provisions of subdivision (1) of this subsection do not apply to:

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

### ADVISORY OPINION

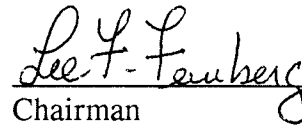
West Virginia Code 6B-2-5(c) provides that, subject to certain exceptions, a public servant may not accept, directly or indirectly, a gift from any one of four potential donors. Those four classes of prohibited gift givers include: lobbyists, current vendors or those seeking to conduct any type of business with the public servant's governmental agency, regulated persons or someone with a financial interest different from the general public that could be affected by the manner in which the public servant performs his or her job responsibilities. A gift from any of these four categories of donors may only be accepted if it falls within specific exceptions established at WV Code 6B-2-5(c)(2).

In this instance the actual donor of the film cassettes is the non-profit Corporation which does not fall within any of the four categories of prohibited gift givers established under WV Code 6B-2-5(c). However, as noted above, public servants may not accept **indirect** gifts from any of the four categories of prohibited donors. Members of the Corporation's Board of Directors and its major contributors included representatives of labor organizations and corporations and could be considered lobbyists, vendors and/or regulated persons. Consequently, the gift of a film cassette from the Corporation could be considered an indirect gift from a prohibited gift giver and would therefore be unacceptable.

However, WV Code 6B-2-5(c)(2) contains a number of exceptions to the general rule that gifts may not be accepted from prohibited gift givers. For example, unsolicited gifts of nominal value or trivial items of informational value may be accepted regardless of the identity of the donor.

Several factors persuade the Commission that this gift falls within the Ethics Act's list of gifts which may be accepted. First, the gift was clearly unsolicited since no funding, public or private, was given to the project in exchange for a promise of a copy of the film. Second, instead of a written summary or oral presentation to the project contributors, the film cassette was intended as a final report on the completion of the film. Most importantly, the purpose of the project was to develop a film history of the State of West Virginia as a constructive educational tool. To that end, the film was made available to the general public statewide on public airwaves, a copy was given to all schools, every library and to each teacher of eighth grade West Virginia History.

For the reasons listed above, the Commission finds that the film is an unsolicited gift of a trivial item of informational value. Therefore, it would not be a violation of WV Code 6B-2-5(c)(1) for the public officials to accept the film cassette from the non-profit Corporation since it falls within the exemption established at WV Code 6B-2-5(c)(2)(C).

  
Chairman