

ADVISORY OPINION NO. 96-08
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON MARCH 7, 1996

PUBLIC SERVANT SEEKING OPINION

General Counsel for a State Agency

OPINION SOUGHT

Is it a violation of the Ethics Act for a State Agency to give a discount to its employees on goods sold by the Agency to the public?

FACTS RELIED UPON BY THE COMMISSION

A State Agency purchases West Virginia crafts and other state products for resale at several facilities which it operates in West Virginia. The Agency is considering adopting an employee discount policy which would permit Agency employees and officials to purchase those crafts and other products at a discount. On some items the discount would be as high as twenty five percent (25%) off of the retail price offered to the general public.

The Agency has stated that it will abide by any Internal Revenue Service rules which may require portions of this discount to be treated and reported as income to the employee utilizing the discount.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b)(1) states in pertinent part that...a public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person...

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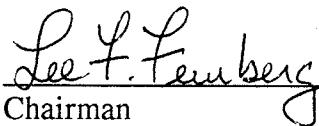
West Virginia Code 6B-2-5(b)(1) prohibits public servants from using their positions for their own private gain or the private gain of another. In this request an Agency wants to provide a discount to its own officials and employees for use on personal purchases of items which the agency has bought for resale to the public.

In several prior Advisory Opinions the Commission has held that attempts by public servants to take personal advantage of agency discounts constitutes the use of public office for private gain.

In Advisory Opinion #95-18 the Commission affirmed its earlier finding that "since the public is not permitted to buy at State prices, it would be a use of office for private gain for a public employee to use his or her position to make personal purchases at State contract prices." (See A.O. #92-15)

The Commission recognizes that in the absence of some statutory or other legal limitation on salary and benefits a public employer has the ability to set the compensation **paid** to its employees. However, the Commission also believes that when a fringe benefit which is not ordinarily available to the general public is used as a perquisite for agency employees, a distinct appearance of impropriety is created. This appearance is based on the public's inevitable perception that public servants are using their unique position of public trust for self-enrichment.

In this instance the public servants of an Agency would be using their position to make purchases at discounted prices which are not available to the public at large. The Commission finds that this action would also be considered a misuse of public office for private gain and would constitute a violation of WV Code 6B-2-5(b)(1).


Chairman