

ADVISORY OPINION NO. 96-42

Issued On September 5, 1996 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

Director of an Airport Authority

OPINION SOUGHT

Is it a violation of the Ethics Act or WV Code 61-10-15 for an Airport Authority Chairman to accept a waiver of the airport landing fees he incurs while conducting official business?

FACTS RELIED UPON BY THE COMMISSION

The Regional Airport Authority leases certain of its facilities to a private business which operates the facilities for the Authority. The private business has instituted a use fee for private aircraft owners who use the facility, but make no purchases. This business has offered to waive the fee for Authority members when they are using its facilities on Authority business.

The Authority Chairman flies into the airport on those occasions when he is required to conduct Authority business and will incur a charge of approximately \$45 for the use fee. The members of the Authority, including its Chairman, are entitled to reimbursement for reasonable and necessary expenses actually incurred in connection with the performance of their duties.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(c)(1) provides 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...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 61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...or any member of any other county or district board, or for any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member he may have any voice, influence or control.

ADVISORY OPINION

The Airport Authority Chairman flies into the airport on those occasions when he is required to conduct Authority business. He will incur a use fee charge of approximately \$45 imposed by the private business which operates certain of the Authority's facilities. That business has offered to waive the use fee for Authority members who use the facilities on Authority business

Because Authority members are entitled to reimbursement for reasonable and necessary expenses incurred in connection with the performance of their duties, the Authority, and not the Chairman, would benefit from a waiver of the use fee. The Ethics Act's prohibition against public servants accepting gifts from interested persons does not apply where, as here, the benefit flows not to the public servant, but to the agency.

It would not be a violation of either the Ethics Act or of WV Code 61-10-15 for the Chairman to permit the private business to waive the fee when it is incurred by him in the course of conducting Authority business.


Chairman