

ADVISORY OPINION NO. 89-75

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 4, 1990

GOVERNMENTAL BODY SEEKING OPINION

A County manager on behalf of a County Commissioner

OPINION SOUGHT

1. Whether it is a violation of the Ethics Act for a County Commissioner to use and accept a parking pass at an airport while he is there attending to County business?
2. Whether it is a violation of the Ethics Act for a County Commissioner to use and accept a parking pass at an airport when he is not there on County business?

FACTS RELIED UPON BY THE COMMISSION

On a regular basis, the state airport authority provides a parking pass to the County Commissioner for his use while "transiting the airport". Three of the airport authority members are appointed by the County Commission.

STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b)(1) states in pertinent part that a public official...may not 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...

West Virginia Code 6B-2-5(c)(1) states that...no official...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 section 6B-2-5(c)(2) states that a person who is a public official...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:

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

(E) Gifts of tickets or free admission extended to public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office.

ADVISORY OPINION

1. An analysis of the pertinent facts and statutory provisions (c)(1) and (2) follows:

a. A public official may not accept certain gifts from persons whom the official knows or has reason to know are engaged in activities which are regulated or controlled by his agency, or from a person(s) who has financial interests which may be substantially and materially affected in a manner distinguishable from the public by the performance or nonperformance of his official duties.

b. The commission considers the use of a free parking pass while the Commissioner is not on County business to be a gift inuring to the Commissioner's direct benefit.

c. Here, it is clear that members of the Airport Authority are controlled or regulated by the County Commission and have financial interests that are substantially and materially affected.

d. The Commission would note that the Legislature in subsection (c)(2) did not include free parking passes for officials, when it specifically permitted free admission and tickets to charitable, cultural or political events.

Furthermore, the Commission does not consider the use of an airport parking pass to qualify as a gift of nominal value.

e. Therefore, it would be a violation of subsection (c) for a County Commissioner to accept a free parking pass for use in "transiting the airport" while there for any purpose other than to conduct business on behalf of the County Commission.

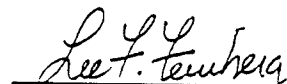
2. The Commission does not consider the use of a free Airport parking pass to be a "gift" within the meaning of the statute when the Commissioner is conducting County business at the Airport, since the County in any event would be required to reimburse the Commissioner for his expenses (parking costs) while he was at the Airport conducting County business.

Therefore, it would not be a violation of subsections (c)(1) and (2) for a County Commissioner to use a free parking pass while at the Airport conducting County business.

An analysis of the pertinent facts and statutory provision (b)(1) follows:

1. An elected public official may not intentionally use his office or prestige for private gain.

2. However, It does not appear here that the public official is "intentionally" doing such, since the free parking pass was not provided to him for his use at his direction or request.



Chairman