

ADVISORY OPINION NO. 89-108

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 19, 1990

GOVERNMENTAL BODY SEEKING OPINION

A University Alumni Association

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a company or a lobbyist to purchase \$10 tickets for a non-profit show and give them to members of the Legislature and staff?

OTHER FACTS RELIED UPON BY THE COMMISSION

The Journalism division of a University Alumni Association is presenting a spoof with the Capitol Press Corps, of the Legislature, on March 7, 1990. Tickets will be (\$10) ten dollars each and all proceeds will go to the University Foundation, a non-profit organization.

The Alumni Association would like to sell tickets to companies and lobbyists who may give the tickets to the Legislators or staff members.

PERTINENT STATUTORY PROVISIONS UPON BY THE COMMISSION

West Virginia Code 6B-2-5(c)(1) states in pertinent part that... No official or employee 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 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. 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;

(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;


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An analysis of the facts presented and the pertinent statutory provisions of West Virginia Code 6B-2-5(c)(1) and (2) follows:

The Ethics Act prohibits the acceptance of certain gifts by public employees and officials from individuals who have financial interests which may be substantially and materially affected by the manner of performance of the official's duties.

However, subsection (c)(2) allows public officials and employees to accept certain gifts with the presumption that such acceptance does not impair the impartiality and the independent judgment of such person. Unsolicited gifts of nominal value such as, tickets valued at ten (\$10) dollars, to attend a charitable event (to benefit a nonprofit University Foundation) are included in the gifts afforded such presumption.

Therefore, it would not constitute a violation of subsection (c)(1) for companies and lobbyists to purchase and provide free tickets to Legislators or staff members to attend the charitable show.


Chairman