

ADVISORY OPINION NO. 89-114

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 19, 1990

GOVERNMENTAL BODY SEEKING OPINION

Regional Manager for state government relations for a Company

OPINION SOUGHT

Whether it is a violation of the Ethics Act for the regional manager of a company to give a wall calendar and pocket planner to Legislators as holiday gifts?

OTHER PERTINENT FACTS RELIED UPON BY THE COMMISSION

The regional manager of a company is a registered lobbyist in the state. During the holiday season he sends a company wall calendar and pocket planner to all Legislators. The total value of each gift is less than two dollars.

PERTINENT STATUTORY PROVISIONS RELIED 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:

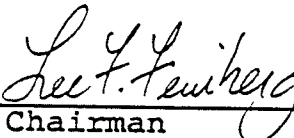
(C) Unsolicited gifts of nominal value or trivial items of informational value;

ADVISORY OPINION

An analysis of the facts presented and 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 officials. Subsection (c)(2) allows public officials to accept gifts with the presumption that such acceptance does not impair the impartiality and the independent judgment of the person. Unsolicited gifts of nominal value or trivial items of informational value are included in the gifts afforded such presumption.

Therefore, it would not constitute a violation of subsection (c)(1) for the regional manager of a company to give wall calendars and pocket planners to legislators as holiday gifts, since each gift has a value of less than two (\$2) dollars.


Chairman