

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 19, 1990

GOVERNMENTAL BODY SEEKING OPINION

A State Appellate Public Defender

OPINION SOUGHT

Whether it is a violation of the Act for a State Appellate Public Defender to accept gifts from penitentiary inmates?

OTHER FACTS RELIED UPON BY THE COMMISSION

The Appellate Public Defender has been employed by the West Virginia Public Defender Services for four years. He is appointed by various State circuit courts to represent indigent convicted felons in the prosecution of appeals of criminal convictions to the Court of Appeals.

In addition to his court appointed work the Public Defender often corresponds with inmates who are doing legal research regarding their cases, or are providing legal assistance to other inmates.

Several months ago an inmate informed the Public Defender that he had been asked by another inmate to contribute to a leather belt for the Public Defender.

Later, the Public Defender received a package containing a battery operated clock with a leather inlay on plywood cut in the shape of the State of West Virginia, a leather wallet with his name stamped on it, a leather belt and key chain. These items were apparently crafted by an inmate well-known for his leather craft skills.

The Public Defender would like to retain these gifts as personal mementos and is willing to obtain an estimate of the retail value of the items and contribute that amount to the inmate welfare fund.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(c)(1) states in pertinent part that... No employee may knowingly accept any gift, directly or indirectly, from any person whom the 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...a person who is a 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:

(F) gifts that are purely private and personal in nature;

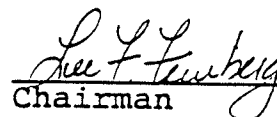
#### ADVISORY OPINION

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

The Ethics Act prohibits the acceptance of certain gifts by a public employee from individuals who have a financial interest which may be substantially affected by the public employee's performance or non-performance of his official duties.

However, subsection (c)(2) allows the acceptance of gifts that are purely private and personal in nature and it would appear that these leather hand-crafted gifts made specifically for the Public Defender would fall within such a category.

Therefore, it is not a violation of the Act for a State Appellate Public Defender to accept hand-made leather crafted gifts that are purely private and personal in nature.

  
Chairman