

ADVISORY OPINION NO. 90-07

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 19, 1990

GOVERNMENTAL BODY SEEKING OPINION

Director of a State Department

OPINION SOUGHT

Whether it is a violation of the Act for a State Department Director to receive gifts from people that he either has the potential to regulate or does regulate?

OTHER FACTS RELIED UPON BY THE COMMISSION

The Director of a State Department received a book, framed picture and a penlight as gifts during the holidays. These gifts were given by people who the Department either regulates or has the potential to regulate. All items have less than a ten dollar monetary value.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(c)(1) states in pertinent part that... a public official of the state may not solicit any gift. 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 6B-2-5(c)(2) states in pertinent part 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:

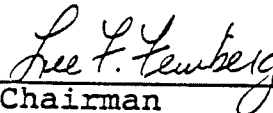
(C) Unsolicited gifts of nominal value or trivial items of informational value;

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

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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 independent judgment of that person. Unsolicited gifts of nominal value or trivial items of informational value and gifts which are purely private and personal in nature are afforded such presumption.

Therefore, it would not a violation of subsections (c)(1) and (2) of the Act, for the Director of a State Department to receive a book, framed picture and penlight each valued at less than ten dollars, as holiday gifts.


Chairman