

ADVISORY OPINION NO. 90-48

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON APRIL 5, 1990

GOVERNMENTAL BODY SEEKING OPINION

Deputy State Superintendent

OPINION SOUGHT

Whether it is a violation of the Act for a State Department to use individuals in the private sector or corporate sponsors to provide training and related assistance to State educators and students?

OTHER FACTS RELIED UPON BY THE COMMISSION

On occasion a State Department has sought cooperation from the private sector and corporate sponsors in providing training to State educators. This cooperation has generally taken the form of financial assistance in paying consultant fees and honorarium, securing appropriate meeting space or facilities, printing related brochures and pamphlets, renting, purchasing, or leasing necessary equipment and supplies, or hosting luncheons, dinners, or receptions.

A substantial effort has been made by the State Department to assure that opportunities to participate in such cooperative efforts were made equally available to all appropriate members of the private and corporate sectors. Additionally, such occasions have never been used or even remotely construed to promote activities that would directly benefit corporate or private sector sponsors. Such occasions have never been used to persuade or influence participants in favor of a particular good or service that a private sector or corporate sponsor may or may not provide.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(c)(1) states in pertinent part that...a public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: **Provided,** That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position as such is subordinate to the soliciting official or employee... 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; or

(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 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:

(A) Meals and beverages;

(D) Reasonable expenses for food, travel, and lodging of the official or employee for a meeting at which the official or employee participates in a panel or speaking engagement at the meeting;

West Virginia Code Section 6B-2-5(c)(3) states in pertinent part that...the acceptance of an honorarium by an elected public official is prohibited. The commission shall, by legislative rule, establish guidelines for the acceptance of reasonable honorariums by all other public officials and public employees other than elected public officials.

#### ADVISORY OPINION

The Commission understands from the facts presented that the private and corporate sponsors do not fall within the three groups of prohibited donors set out in subsection (c)(1), that is;

a) a person or company seeking to do business or doing business with the Department;

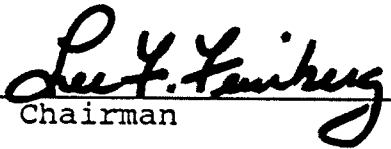
b) a person or company whose activities are regulated or controlled by the Department; or

c) a person or company who has financial interests which may be substantially and materially affected by the performance of public official's duties in the Department.

Therefore, it is not necessary for the Commission to decide whether the solicitation of the certain items named constitute gifts since with the exception of the honorarium and consultant fees, the public employee does not receive any direct pecuniary benefit.

However, if the honorarium is going to be given to a public employee he or she must seek an advisory opinion from the Commission as to what constitutes a reasonable honorarium as required in subsection 6B-2-5(c)(3). It is the Commission's opinion that consultant fees would be considered part of an employment contract and not a gift.

Therefore, it is not a violation of subsection (c)(1) for the State Department to accept financial assistance and other assistance as noted above from private sponsors.

  
Chairman