

ADVISORY OPINION NO. 90-64

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON APRIL 20, 1990

GOVERNMENTAL BODY SEEKING OPINION

A State Legislator

OPINION SOUGHT

1. Whether it is a violation of subsection 6B-2-5(b)(1) of the Act for a Legislator to receive private gain by participating in promotional programs sponsored by hotels while the official is conducting State business?

2. Whether it is a violation of subsection 6B-2-5(c)(1) of the Act for a public official to accept promotional gifts and subsequent free lodging for staying at a particular hotel while on State business?

OTHER FACTS RELIED UPON BY THE COMMISSION

Many hotels and motels give public officials points for staying overnight when they are there performing business of the State. These points may be accumulated for free stays at hotels or other benefits. These facilities also give points to other guests (non-state employees) if they participate in their incentive programs.

The Legislator's expenses are paid for by the State while the Legislature is in session, when participating in interim meetings, or conducting other official State business.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that...A public official may not intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. The performance of usual and customary constituent services, without compensation, does not constitute the use of prestige of office for private gain.

West Virginia Code Section 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;...

(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...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....The provisions of subdivision (1) of this subsection do not apply to:

(B) Ceremonial gifts or awards which have insignificant monetary value;...

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

#### ADVISORY OPINION

#### **1. An analysis of the pertinent facts and statutory provision of subsection 5(b)(1):**

It is the Commission's opinion that it would be a violation of subsection (b)(1) for the public official (a State Legislator) to use his office and official responsibilities for his own private gain, that is, receiving bonus points for free accommodations and other benefits while conducting official business at the State's expense.

2. An analysis of the pertinent facts and statutory provisions of subsections 5(c)(1) and (2) follows:

As an elected public official, the State Legislator may not accept any gift, directly or indirectly, from any person whom he or she knows or has reason to know is doing or seeking to do business with his agency or has financial interests which may be substantially and materially affected.

However, the acceptance of certain gifts is permitted. These include meals and beverages, and unsolicited gifts of nominal value, as set out in subsection (c)(2). However, these gifts do not include promotional gifts (of more than a nominal nature) or free lodging at hotels.

Therefore, it would be a violation of subsections (c)(1) and (2) of the Act for the State Legislator as an elected public official to receive gifts identified above (such as free subsequent accommodations) which are based on providing business to a certain hotel or motel while the Legislator is acting on State business at the State's expense.

  
VICE-CHAIRMAN