

ADVISORY OPINION NO. 90-145
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON SEPTEMBER 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

A State Delegate

OPINION SOUGHT

- a. Whether it is a violation of the Act for a public official to purchase items for his private benefit with a credit card which offers inducements based on its use when such expenses are reimbursed with State funds?
- b. Whether it is the Delegate's responsibility to distinguish bonus points and frequent flyer miles accumulated using private funds from those accumulated as a result of expenses for which he receives reimbursement from the State?
- c. Whether the delegate is required to separate rebates earned by private purchases from those earned from purchases for which reimbursement is received from the State?
- d. Whether Advisory Opinion No.90-118 is applicable to all officials and employees of the State and the political subdivisions subject to the Ethics Act?

OTHER FACTS RELIED UPON BY THE COMMISSION

The requestor has three major credit cards which he uses on a regular basis, each of these card companies offers an incentive for its use. One card provides bonus points similar to those offered at local hotels, another offers frequent flyer miles for each dollar charged and the third charge card provides a cash rebate based upon purchases charged with the card.

While conducting official business at the State's expense the Delegate has charged reimbursable expenses (i.e. meals and other purchases) to these cards and received the incentive package for his personal benefit.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(a) states that the provisions of this section apply to all elected and appointed public officials and public employees, whether full or part time, in state, county municipal governments and their respective boards, agencies, departments, and commissions and in any other regional or local governmental agency, including county school boards.

West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that...a public official may not knowingly and 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.

ADVISORY OPINION

a, b and c. As previously noted in Advisory Opinion No. 90-100, the Commission found that State Travel Regulations are currently in the process of being reviewed and changed. One regulation provides that **Any charge or credit card offering bonuses, cash-back plans, rebates, or similar programs may be used to pay state business travel expense, but the value derived from those programs for all charges relating to state business travel and reimbursed to the traveler from State appropriated or administrative accounts must be applied to future state business travel.**

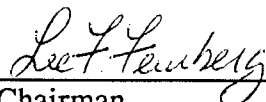
There are several ways the Delegate could address the issue of distributing these incentives. The Commission would suggest that the Delegate obtain a credit card to be used only for State business and travel expenses. When the Delegate uses this charge card any incentives received from using such charge card will inure to the benefit of the State. For instance, bonus points or frequent flyer points earned from the use of this card would be used for future State business travel since that is the sole purpose of the card. Also, when the Delegate uses the charge card for business expenses the State will receive the benefit of any incentive offered by the charge card company since the State reimburses the charges on that card.

The Delegate could use a personal charge card for such expenses which are not reimbursable by the State and maintain the incentive points for his subsequent personal use. Using separate charge cards for business expenses and personal expenses would alleviate the necessity of distinguishing and distributing any bonus points or incentives which may be gained through the use of the charge cards and would avoid the appearance of a violation of subsection 6B-2-5(b)(1) of the Ethics Act (use of public office for private gain by a public official or employee).

Any questions regarding State Travel Regulations or other possible solutions to the issue of travel bonus points and charge card incentive plans should be directed to Mr. Scott Padon, Administrator of Travel Management at 348-0111.

d. Subsection 6B-2-5(a) of the Ethics Act provides that Advisory Opinions issued by the Ethics Commission are applicable to all elected and appointed public officials and public employees, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments, and commissions and in any other regional or local governmental agency, including county school boards.

Pursuant to section 6B-2-3 any person relying in good faith on an advisory opinion shall be afforded immunity from the sanctions of the Ethics Act and shall have an absolute defense to any criminal prosecution for actions taken in good faith reliance on such opinion in regard to the sanctions of the Ethics Act and Section 61-10-15 of the West Virginia code.


Chairman