

ADVISORY OPINION NO. 90-160

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON OCTOBER 4, 1990

GOVERNMENTAL BODY SEEKING OPINION

An Attorney on behalf of a County Building Commission

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a County Building Commission to present each Board member with a gift (not to exceed \$100) in recognition of their services?

OTHER FACTS RELIED UPON BY THE COMMISSION

The Building Commission is composed of five members who are appointed by the County Commission. These five members serve on the Board voluntarily without compensation.

The Board Members, at the secretary's suggestion would like to present themselves with an award of a gift for their services which would not exceed the sum of \$100 per member.

The Building Commission has certain funds that have accumulated from charges for services rendered in issuing hospital bonds. These monies are earmarked for future building improvements, expansions and construction. The requestor states that none of their funds are public monies nor have they been provided by the County Commission.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(c)(1) states in pertinent part that...No official...may knowingly accept any gift, directly or indirectly, from a lobbyist or 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(b)(1) states 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. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

ADVISORY OPINION

Gifts

A public official may not accept a gift from a lobbyist or 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.


This subsection of the Act would not apply in this instance since the Commission members do not fall within these categories. The members are actually awarding the gift to themselves since, the \$100 is being supplied by the Building Commission and the public officials are the Building Commission Board members.

Therefore, it would not be a violation of subsection 6B-2-5(c) of the Ethics Act for a County Building Commission to present each Board member with a gift (not to exceed \$100) in recognition of their services.

Private Gain

However, subsection 6B-2-5(b)(1) of the Act prohibits a public official from intentionally using his or her office for private gain. Board members who provide themselves with a gift of a \$100 in recognition of their services on a **voluntary** board would be in violation of this subsection. The Commission has determined that this action would constitute the intentional and knowing use of the Board Members' public office for private gain.

Therefore, it would be a violation of subsection 6B-2-5(b)(1) of the Ethics Act for a County Building Commission to present each voluntary Board member with a gift (not to exceed \$100) in recognition of their services.


Chairman