

ADVISORY OPINION NO. 90-181
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON NOVEMBER 1, 1990

GOVERNMENTAL BODY SEEKING OPINION

The President of a State Employees' Association

OPINION SOUGHT

- a. Whether it is a violation of the Ethics Act for representatives of the Association to speak to the Legislators during the legislative session concerning issues of interest to the Association without registering as lobbyists or submitting a Lobbyist Activity Report?
- b. Whether it is a violation of the Ethics Act for a non-profit Association to sponsor a dinner for all members of the Legislature who wish to attend?

OTHER FACTS RELIED UPON BY THE COMMISSION

The Judicial Code of Ethics permits members of this Association to speak out on issues that would affect the judiciary. Members of the Association would like to speak with Legislators during the Legislative session about issues of concern. The representatives of the Organization would not receive any type of compensation for these activities but would be reimbursed for expenses such as mileage, meals and lodging.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

Lobbying

West Virginia Code Section 6B-3-1(7)(B) states in pertinent part that...the term "lobbyist" shall not include the following persons, who shall be exempt from the registration and reporting requirements...**unless such persons engage in activities which would otherwise subject them to the registration and reporting requirements:**

(iii) Persons who lobby without compensation or other consideration for acting as lobbyists, when such persons **make no expenditure** for or on behalf of any government officer or employee in connection with such lobbying, are exempt. The exemption...is intended to permit and encourage citizens of this state to exercise their constitutional rights to assemble in a peaceable manner, consult for the common good, instruct their representatives, and apply for a redress of grievances. Accordingly, such persons may lobby without incurring any registration or reporting obligation... The Commission may promulgate a legislative rule to require registration and reporting by persons who would otherwise be exempt...if it determines that such rule is necessary to prevent frustration of the purpose of this article...

(iv) persons who lobby on behalf of a nonprofit organization with regard to legislation, without compensation, and who restrict their lobbying activities to no more than twenty days or parts thereof during any regular session of the Legislature, are exempt...

Legislative Dinner

West Virginia Code Subsection 6B-3-4(e) states in pertinent part that...no portion of the amount of an expenditure for a dinner, party, or other function sponsored by a lobbyist or a lobbyist's employer need be attributed to or counted toward the reporting amount of twenty-five dollars for a particular public official or employee who attends such function if the sponsor has invited to the function all the members of (1) the Legislature, (2) either house of the Legislature, (3) a standing or select committee of either house, or (4) a joint committee of the two houses of the Legislature. However, the amount spent for such function shall be added to other expenditures for the purpose of determining the total amount of expenditures reported...

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...

(A) Meals and beverages;

ADVISORY OPINION

1. The main question to be addressed by the Ethics Commission when issuing this opinion is whether a person who lobbies for a non-profit organization less than 20 days but has unlimited expenditures is exempt from the lobbyist registration and reporting requirements.

a. Pursuant to subsection 6B-3-1(7)(B)(iv) any person who lobbies on behalf of a non-profit organization and limits his or her activities to less than twenty days or parts thereof during the legislative session is not required to register as a lobbyist. There is no limitation on expenditures in this provision.

Subsection 6B-3-1(7)(B) of the Ethics Act provides that certain people shall be exempt from the registration and reporting requirements set forth in the Act, unless such persons **engage in activities** which would otherwise subject them to the registration and reporting requirements. The Commission has determined that it is implicit in this subsection that any person who makes an expenditure on behalf of a Legislator is engaged in activities that requires him to register as a lobbyist.

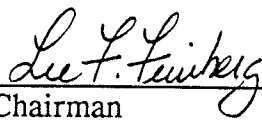
Therefore, if the representative of the non-profit organization makes expenditures on behalf of any legislator he or she must register as a lobbyist and file an expenditure report.

Reporting

The Commission would remind the Association that if the representatives of the non-profit organization make any expenditures on behalf of a legislator and are thus categorized as lobbyists they must report the expense incurred by the Association for the dinner.

However, the Commission would note that subsection 6B-3-4(e) states that if the Association includes all the members of the Legislature, either house of the Legislature, a standing or select committee of either house, or a joint committee of the two houses of the Legislature no portion of the amount of an expenditure for a dinner, party, or other function sponsored by a lobbyist or a lobbyist's employer need be attributed to or counted toward the reporting amount of twenty-five dollars for a particular public official or employee who attends such function. However, the amount spent for such function shall be added to other expenditures for the purpose of determining the total amount of expenditures reported.

b. Subsection 6B-2-5(c)(2) of the Ethics Act specifically permits a public official to receive or accept a gift of meals and beverages. Therefore, it would not be a violation of subsection 6B-2-5(c) of the Ethics Act for the Association to sponsor a dinner for members of the Legislature.


Chairman