

ADVISORY OPINION NO. 91-39

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 6, 1991

GOVERNMENTAL BODY SEEKING OPINION

Deputy Secretary of a State Department

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a State Deputy Secretary to accept an expense paid trip to a medicaid conference from an Association which is regulated by her State Department?

FACTS RELIED UPON BY THE COMMISSION

The U.S. Department of Health and Human Services Health Care Financing Administration is sponsoring the 23rd Annual State Medicaid Directors' Conference in Washington D.C. on June 4-5, 1991. The Deputy Secretary of a State Department has attended this conference for the past three years at the expense of the State Department.

The Director of the State Department has stated that the Department would benefit if the Deputy Secretary attends this conference. She would be accompanying the newly appointed Medicaid Director and their joint participation and discussion of issues raised at the meeting will assist the Medicaid Director in his knowledge of the program. It will also help the State Department make decisions regarding certain program issues.

An Association which is regulated by her State Department has offered to reimburse the Deputy Secretary's expenses. However, if the Association is not permitted to fund the Deputy Director's trip to the conference, the State Department has agreed to pay the expenses of the Deputy Secretary in order that she may attend.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(b)(1) states that....a public employee 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.

West Virginia Code Section 6B-2-5(c)(1) states in pertinent part that...no 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 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. The provisions of subdivision (l) of this subsection do not apply to:

(A) Meals and beverages;...

### **ADVISORY OPINION**

#### **Gifts**

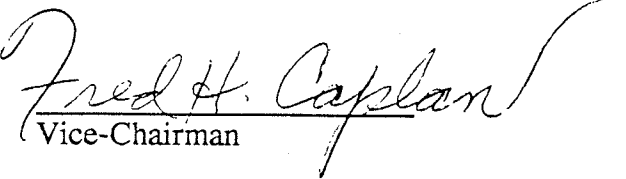
The Association which would like to sponsor the Deputy Secretary's trip is regulated by her State agency. Therefore, if the employee received personal gifts from the Association it would be a violation of subsection 6B-2-5(c)(1). Although the Commission recognizes that as a result of this trip the employee will be attending a Medicaid Conference at no charge, receiving free meals and lodging at the expense of an Association that is regulated by the State, it considers these benefits to primarily inure to the State since the Deputy Secretary's State agency will be responsible for the reimbursement of such expenses if the Association is not allowed to reimburse the expenses incurred by her attendance at the conference.

Therefore, it would not be a violation of subsection 6B-2-5(c)(1) of the Ethics Act for the Deputy Secretary of a State Department to accept reimbursement of expenses incurred from an Association which is regulated by her State Department.

#### **Private Gain**

Further, it is the Commission's opinion that attending the Medicaid Conference would be part of the employee's training and education and would not be considered improperly using her office for private gain. As noted, if the Association is not allowed to reimburse the expenses incurred by her attendance to the conference, the Deputy Secretary's State agency will be responsible for the reimbursement of such expenses.

Therefore, it would not be a violation of subsection 6B-2-5(b)(1) of the Ethics Act for the employee to accept an expense paid trip from an Association to attend a Medicaid Conference course. Her attendance would primarily benefit the State since her objective would be to aid the newly appointed Medicaid Director in the understanding and management of the Medicaid program and to assist the State Department in making decisions on program issues.

  
Vice-Chairman