

ADVISORY OPINION NO. 91-56

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON AUGUST 1, 1991

GOVERNMENTAL BODY SEEKING OPINION

An Administrative Assistant of a State Division

OPINION SOUGHT

Whether it is a violation of the Ethics Act for State employees to participate in a one day rate reduction program offered by a white water rafting Company when the reduction is \$17?

OTHER FACTS RELIED UPON BY THE COMMISSION

Each year on West Virginia Day, a white water rafting Company offers reduced rates to a State Division and all other State employees who wish to participate in the white water rafting program.

Based on the group rate which is offered to customers during week days, the cost per person would normally be approximately \$62 for an all day white water rafting trip. State employees who wish to participate in the discount program would be offered a special one time price of \$45 for the trip. This would provide a savings of \$17 per participant.

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

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

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Pursuant to subsection 6B-2-5(b)(1) of the Ethics Act a public official or a public employee may not knowingly and intentionally use his or her office for private gain. However, the requestor has stated that the discount program is available to all State employees who wish to participate in the white water rafting program, regardless of their specific public employment position, whether he is an administrative assistant or a maintenance employee. The Commission determined in Advisory Opinion #91-32 that this type of discount program would not be considered a knowing and intentional use of public office for private gain.

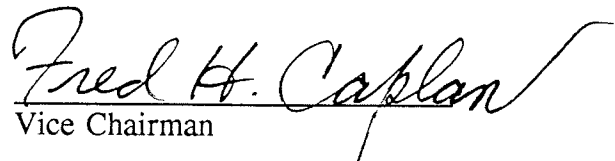
Therefore, it would not be a violation of subsection 6B-2-5(b)(1) of the Ethics Act for State employees to participate in a one day rate reduction program offered by a white water rafting Company.

Pursuant to subsection 6B-2-5(c)(1) of the Ethics Act a public official or a public employee may not accept a gift from persons seeking to conduct business with his or her State agency, persons having an interest in the performance of the public officials' duties or from persons who are regulated by the public officials' governmental agency.

The Commission would note that there are certain public officials and employees who would fall within the prohibited category established in this subsection, since the white water rafting Company is regulated by specific governmental agencies.

However, subsection 6B-2-5(c)(2) of the Ethics Act establishes several exemptions from the prohibition against the acceptance of gifts by public officials and employees. One such category is a gift of nominal value. The Commission previously determined that in order for a gift to be considered nominal its pecuniary value must be less than \$20. In this instance the value of the discount offered to public officials and employees for the white water rafting trip is \$17.

Therefore, it would not be a violation of subsection 6B-2-5(c)(1) of the Ethics Act for public officials and public employees to participate in a one day rate reduction program offered by a white water rafting Company when the value of the reduction is nominal.


Vice Chairman