

ADVISORY OPINION NO. #91-58

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON SEPTEMBER 13, 1991

GOVERNMENTAL BODY SEEKING OPINION

An Attorney on behalf of City Officials

OPINION SOUGHT

Whether it is a violation of the Ethics Act for City officials and employees to accept a discount on tires from a Company which is seeking to conduct business with the City?

FACTS RELIED UPON BY THE COMMISSION

A City has been contacted by a local tire Company which would like to supply tires for City owned vehicles. In addition, the tire Company offered to sell to any Councilman, City official or City employee who uses his or her personal vehicle for City business, high quality radial tires for his or her personal vehicle at a cost of \$50 each. This would provide a savings of \$200 per customer. The Company has stated that this offer is in no way related to the fact that the tire Company would like to supply tires for the City owned vehicles.

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...

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

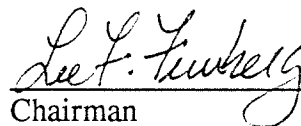
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Pursuant to subsection 6B-2-5(c)(1) of the Ethics Act a public official or a public employee may not accept a gift from persons seeking to conduct business with his or her agency, persons having an interest in the performance of the public official's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

The Commission would note that City Council members, City officials and City employees would fall within the prohibited category established in this subsection, since the tire Company is seeking to conduct business specifically with the City.

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. In this instance the value of the discount offered to the City officials and employees toward the purchase of radial tires is \$200 or \$50 per tire.

Therefore, it would be a violation of subsection 6B-2-5(c)(1) of the Ethics Act for the public officials and public employees to participate in a discount program offered by a private tire Company seeking to conduct business with the City since the value of the reduction would not be considered nominal.


Chairman