

ADVISORY OPINION NO. 91-85

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 5, 1991

GOVERNMENTAL BODY SEEKING OPINION

A County Administrator

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a County Administrator to accept gifts from subordinate employees?

FACTS RELIED UPON BY THE COMMISSION

The requestor has worked in various County positions for sixteen years and consequently she has worked with many of the County employees. Since July 1987 she has been employed as the County Administrator.

Friends and family members are giving the requestor a baby shower and some of her co-workers may attend.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(c)(1) states in pertinent part that...a...public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the...employee or...her immediate family: **Provided,** That no...public employee may solicit for a charitable purpose any gift from any person who is also an...employee...and whose position as such is subordinate to the soliciting...employee...No...employee may knowingly accept any gift, directly or indirectly, from...any person whom the...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 §6B-2-5(c)(2) states in pertinent part that...a person who is a public...employee may accept a gift described in this subdivision...

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

(F) Gifts that are purely private and personal in nature;...

### ADVISORY OPINION

#### **Solicitation**

A public official or a public employee may not solicit any gift, except for a charitable purpose. The Commission does not consider the purchase of a gift for a baby shower to be a charitable purpose. Consequently, the County employee may not solicit such gifts. The Commission has defined "solicitation" as seeking to obtain by direct persuasion or by petitioning persistently.

The Ethics Act prohibits the solicitation of gifts by public officials or public employees but does not proscribe such conduct for other individuals. The party is being given in honor of the County employee and she is not personally responsible for issuing invitations to the shower.

Further, the Commission determined in Advisory Opinion #90-175 that provided employees are not solicited but wish to voluntarily participate there is no solicitation in violation of WV Code §6B-2-5(c). The Commission would stress that such participation must be **voluntary** and **without any coercion**. Under the facts provided, the decision to attend the shower and give a gift is purely voluntary.

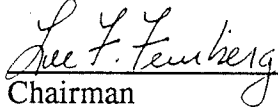
#### **Acceptance**

The Ethics Act places no restrictions on a public employee's ability to accept gifts from individuals who do not fall within four prohibited categories established in WV Code §6B-2-5(c)(1). These categories include lobbyists, vendors, persons who are regulated by the public employee's governmental agency and individuals who have a financial interest in the performance of the public employee's job responsibilities. It is conceivable that a person who falls within one of the four prohibited categories of gift givers may attend the public employee's baby shower.

WV Code §6B-2-5(c)(2) of the Ethics Act establishes categories of gifts which may still be accepted from such individuals. These gifts include unsolicited items of nominal value. The Commission has determined that for a gift to qualify as nominal it must have a monetary value of \$20 or less.

Also included within the exemption categories are gifts which are purely private and personal in nature. The Commission assumes that any present given to the public employee during a baby shower would fall within such category.

Therefore, it would not be a violation of WV Code §6B-2-5(c)(1) of the Ethics Act for a County Administrator to accept baby shower gifts from subordinate employees when the gift has a monetary value of less than twenty dollars or where there exists a social relationship between the donor and the requestor which would render the gift purely private and personal in nature.

  
Chairman