

ADVISORY OPINION NO. 92-15

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MAY 7, 1992

GOVERNMENTAL BODY SEEKING OPINION

A Public Employee

OPINION SOUGHT

Is it a violation of the Ethics Act for a public employee to purchase merchandise through a State contract when the merchandise is intended for the employee's personal use or for use in the employee's private business?

FACTS RELIED UPON BY THE COMMISSION

The requestor believes that at least one State agency purchases goods which are available through a statewide purchase order and allows its employees to purchase such items for their private use. Initially, such merchandise is paid for with public funds from the agency's budget. However, the employees reimburse the State agency for the cost of the purchase.

The apparent purpose of this arrangement is to save money for the public employees. The cost of the merchandise through the State contract is generally less than what is available to the private sector. Further, State agencies do not pay a sales tax when making purchases. The Commission assumes that this request is limited to goods intended for the exclusive use or disposition of the employee for reasons unrelated to his employment.

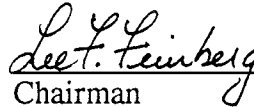
PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §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.

ADVISORY OPINION

Pursuant to West Virginia Code §6B-2-5(b)(1), public employees may not intentionally use their public employment for their own private gain. In this instance, the public employee would receive discounts on merchandise as a direct result of his or her public employment position. These discounts are not offered to the individual public employees by the merchant and are not available to private citizens. Further, since such price reductions are procurable only through the State contract, the Commission assumes that the vendors intend such prices for governmental use only.

Therefore, it would be a violation of West Virginia Code §6B-2-5(b)(1) for public employees to purchase merchandise through a State contract when the merchandise is intended for their own personal use or for use in a private business which they may conduct on their own time. The public employees would be using their position for private gain since they would receive price discounts at the expense of the vendor who does not intend to offer such discounts to individuals. Furthermore, the State would lose any applicable sales tax revenues and the employee's private business would profit from an unfair cost advantage over any potential business competitors since the competitors would not be afforded the opportunity to take advantage of such cost reductions.


Chairman