

ADVISORY OPINION NO. 94-10
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON APRIL 7, 1994

PERSON SEEKING OPINION

An advertising and public relations Firm

OPINION SOUGHT

Is it a violation of the Ethics Act for a Developer to invite and pay the travel, lodging and meal expenses associated with a two day trip for members of the Legislature to observe the operation of riverboat gambling and its effects on a community?

FACTS RELIED UPON BY THE COMMISSION

An advertising and public relations firm has a potential client that is a nationally known developer of riverboat gambling properties as well as hotels and other entertainment facilities. This client was moderately involved in the recent consideration of riverboat gambling by the West Virginia Legislature in that it supported public information programs. It was not a part of the committee established to promote riverboat gambling via television advertising.

The public relations firm anticipates that riverboat gambling will also be considered in the next regular legislative session. It has suggested to the potential client that members of the legislature be given an opportunity to observe first hand the functioning and impact of riverboat gambling in a community.

To that end, the firm would like to invite all members of the legislature to participate in a series of familiarization tours of selected riverboat gambling sites already in existence. The legislators would be provided round trip airfare from Charleston, Pittsburgh, or Washington, D.C. to the host city, transfers from the airport, a hotel room for one night, necessary meals and free admission to the facilities.

While the legislators will be encouraged to visit and watch the proceedings, they will be discouraged from actually gambling during their visit. No cash, chips, tokens, or other incentives will be provided. Spouses or friends will not be included in the invitation and the legislator will have to invest his or her own weekend time to participate in the visit.

The firm anticipates the actual cash outlay for each visitor will be approximately \$500.00. This figure involves the use of supersaver airline rates with 14-day advance booking, a Saturday night stay, discounted rooms at the hotel properties, and meal service within the food service properties owned by the developer.

During the legislator's stay, he or she would be escorted to meetings with individuals pre-selected by the legislator. He or she would then be given an escorted tour of the facilities. Unescorted time will also be encouraged so that each legislator has an opportunity to visit, interview or observe anyone of interest without the firm's interference.

At the time the invitation is sent, each legislator will be asked to select meetings with any or (if time permits) all of the following: city officials, religious leaders, accountants, city planners, county commissioners, police officials, city/county engineers, health care representatives, local business leaders, and others selected by the legislator. Based on the schedule selected, each visitation itinerary will be tailored to the information requests of each legislator.

The requestor also offers an alternate scenario to the proposal outlined above. In an effort to reduce the number of legislators who would visit the riverboat gambling site, the Developer would be willing to limit the number of invitations. The requestor suggests that the chairmen of various committees from both Houses select a joint committee to represent the legislature at the riverboat gambling location. In this way, a sufficient number of lawmakers would be given the opportunity to have the first hand experience and could report their findings back to their full committees or to a joint session of the Legislature.

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...may not knowingly and intentionally use his...office or the prestige of his...office for his...own private gain... The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

West Virginia Code Section 6B-2-5(c)(1) states in pertinent part that...No official...may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official knows or has reason to know:

- (A) Is doing or seeking to do business of any kind with his agency;
- (B) Is engaged in activities which are regulated or controlled by his 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.

ADVISORY OPINION

Gifts

Pursuant to WV Code §6B-2-5(c)(1), a public official may not accept gifts from lobbyists, vendors, persons who are regulated by their governmental agency, or any person who has a financial interest in how the public official performs his public duties. The Developer of riverboat gambling properties falls within this group of prohibited gift givers.

In Advisory Opinions No. 92-35 and 92-38 the Commission established five criteria to assist public servants in determining whether accepting financing for a trip from such individuals would violate the Ethics Act:

The trip must be necessary to fulfill an existing agency need and the trip must be appropriate for the proposed traveler. The issue of riverboat gambling is controversial and it is likely that an effort will be mounted to bring it before the legislature in 1995. The intent of the program outlined in the request letter is to make available to all legislators the opportunity to have a "hands on" experience with riverboat gambling. Although the potential information pertaining to riverboat gambling would be helpful to the legislators, the proposed trip is not necessary since the information could be obtained through other means.

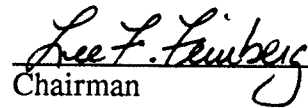
It is also not apparent that the proposed travellers would be appropriate since many of the legislators are either not seeking reelection or will not be successful in obtaining renomination.

The site of the proposed trip must be appropriate. Obviously, for the legislators to most effectively observe the effects of legalized riverboat gambling on a community they must visit a riverboat gambling community. Therefore, the sites of the proposed trip would be appropriate.

The trip must offer a reasonable return on the time spent. The Commission has determined that the Program will not offer a reasonable return for the time spent. The requestor could provide the names and telephone numbers of the individuals in the communities and interested legislators could contact any of those individuals to discuss the activities of the riverboat gambling industry and their effects on local communities at their mutual convenience.

The benefit to the agency must be significantly greater than the incidental benefit to the traveler. Although the trip will not involve first class travel or accommodations and will be scheduled on a weekend during the legislator's personal time, it is the opinion of the Commission that the incidental benefit to the legislators will not be outweighed by the resulting benefit to the state and the public in general since as previously noted, the information could be obtained through other means.

Since several of the established criteria are not met, the Commission finds that the offer of a free trip to a riverboat gambling community to either the entire legislature or selected legislators would violate the provisions of WV Code §6B-2-5(c)(1).


Chairman