

**ADVISORY OPINION NO. 95-20**  
**ISSUED BY THE**  
**WEST VIRGINIA ETHICS COMMISSION**  
**ON MAY 4, 1995**

**PUBLIC SERVANT SEEKING OPINION**

A State Employee

**OPINION SOUGHT**

Is it a violation of the Ethics Act for a State employee to receive a door prize from a vendor and donate the prize to a non-profit organization?

**FACTS RELIED UPON BY THE COMMISSION**

A State employee attended a local computer conference where approximately 15 vendors, under the umbrella of their sponsoring distributor, met with public and private sector clients. The sponsoring distributor held technical classes, a vendor show in the afternoon, and a cafeteria-style dinner.

After the dinner, the sponsor hosted a "casino night" event. All 150 persons in attendance were given an equal amount of start up "money". Participants could then buy vendor apparel with their winnings.

At the end of the evening the participants were given a raffle ticket for every \$5,000 of their winnings. Twenty-five vendor-provided gifts were available in the raffle drawing. During the raffle the requester won a large gas grill from an unknown vendor. He donated the prize to a local non-profit little league organization in his community.

**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...

West Virginia Code §6B-2-5(c)(1) states in pertinent part that...No official or employee may knowingly accept any gift, directly or indirectly, 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;...

West Virginia Code §6B-2-5(c)(2) states in pertinent part that... Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person....The provisions of subdivision (1) of this subsection do not apply to:

- (A) Meals and beverages;
- (B) Ceremonial gifts or awards which have insignificant monetary value;
- (C) Unsolicited gifts of nominal value or trivial items of informational value;
- (D) Reasonable expenses for food, travel, and lodging of the official or employee for a meeting at which the official or employee participates in a panel or speaking engagement at the meeting;
- (E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;
- (F) Gifts that are purely private and personal in nature; or
- (G) Gifts from relatives by blood or marriage, or a member of the same household.

### **ADVISORY OPINION**

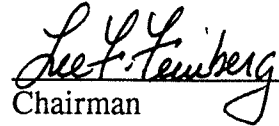
West Virginia Code §6B-2-5(c) bars a public servant from accepting a gift, "directly or indirectly," from vendors. The Ethics Act provides only a limited list of exceptions to this prohibition. Taking into consideration the average value of a gas grill; such a gift would not fall within any of the exceptions established by the Ethics Act.

The Commission declines to approve the acceptance of gifts under the circumstances outlined in the request letter. Although there was a random drawing, it is certain that all gifts were donated by vendors and could not be accepted unless they fell within an exemption category.

Therefore, it would be a violation of the Ethics Act for a public employee to accept the gift of a gas grill, even though the gift was received in the form of a door or raffle prize, since all such prizes were donated by vendors.

However, in this instance, the requester immediately donated the gift to a non-profit organization and did not take a tax deduction for the charitable contribution. Consequently, the requester received no personal benefit or private gain from the gift.

Therefore, the Commission finds that under these specific circumstances the requester did not violate the Ethics Act's prohibitions against accepting a gift from a vendor or using a public position for private gain. The Commission's decision is limited to the precise facts and circumstances of this case.

  
Chairman