

ADVISORY OPINION NO. 95-49

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 7, 1995

GOVERNMENTAL BODY SEEKING OPINION

A State Employee

OPINION SOUGHT

Is it a violation of the Ethics Act for an employee of a State agency to accept a gift from a customer of that Agency?

FACTS RELIED UPON BY THE COMMISSION

The requester is a full-time employee of a State Park facility. Recently a guest of the Park came in to register and pay the balance due for his reservation. At that time the customer, a photographer, commented that two of his photographs were featured in a local magazine. One of the pictures was of a locomotive at the Cass Scenic Railroad.

During the ensuing conversation the public employee told the customer that her husband has worked for the Cass Scenic Railroad for thirty years and runs the locomotive on several excursions.

Several days later, when the customer returned to the office to check out, he gave the public employee an 11 x 16, matted and framed photograph of the locomotive. The requester believes that this picture is valued at over \$25.00

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(c)(1) provides 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.

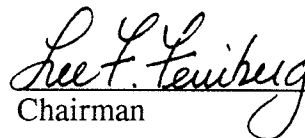
ADVISORY OPINION

Pursuant to West Virginia Code 6B-2-5(c)(1), a public official or employee may not accept a gift from a lobbyist, persons who are seeking to conduct business with their governmental agency, persons who are regulated by their governmental agency, or any person who has a unique financial interest in how the public official or public employee performs their public duties. Any gift from a member of one of these four classes of donors may not be accepted unless it falls within a list of exceptions contained in WV Code 6B-2-5(c)(2).

In this instance the individual giving the gift to the public employee is merely a customer of a State Park. Although technically he may be seeking to "conduct business" with that governmental agency, the Commission has determined that this is not the type of relationship covered by WV Code 6B-2-5(c)(1)(A). Social guests at State Park lodges would not be considered vendors seeking to "conduct business" as that term is used in the Ethics Act.

Therefore, since the guest at the State Park facility would not fall within one of the categories of prohibited gift givers, it would not be a violation of WV Code 6B-2-5(c)(1) for the requester to accept his gift of a photograph.

WV Code 6B-2-5(b)(1) provides that public employees may not use their public position for their own private gain or for the private gain of another. Although there is no evidence that such an incident occurred in this instance, the requester is cautioned that she may not use her position at the State Park facility to obtain, increase or promote her personal interests. She may not offer preferential treatment, exclusive services or other extraordinary assistance to those individuals who offer her special gratuities as a quid pro quo.


Chairman