

ADVISORY OPINION NO. 96-47

**Issued on October 3, 1996 by the
WEST VIRGINIA ETHICS COMMISSION**

PUBLIC SERVANT SEEKING OPINION

State employee

OPINION SOUGHT

Is it a violation of the Ethics Act for certain state employees to accept a 15% discount from a retail store?

FACTS RELIED UPON BY THE COMMISSION

A retailer has offered a fifteen per cent (15%) discount on all merchandise to any employees of the Agency who come into the store in uniform or show a valid Agency identification card.

The store is not regulated by the Agency. It is not a current vendor of the Agency and has no plans to become a vendor in the foreseeable future. The store traditionally offers this discount as a courtesy to all members of law enforcement agencies.

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.

West Virginia Code 6B-2-5(c)(1) states in pertinent part that.... [n]o 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

The Ethics Act, at WV Code 6B-2-5(c), prohibits a public servant from accepting gifts from interested persons, i.e., lobbyists, vendors, regulated persons and those with financial interests that could be significantly affected, in a manner distinguishable from the general public, by how that public servant performs his or her job.

The retailer does not fall within any of these four categories of prohibited donors. Therefore it would not be a violation of WV Code 6B-2-5(c) if employees of the Agency accepted the proposed discount.

This opinion relies on the fact that the retailer is not at present, and has no current plan to become, a vendor to the Agency. If the retailer attempts to become a vendor to the Agency the requester is advised to seek further guidance from the Ethics Commission staff.

The Ethics Act, at WV Code 6B-2-5(b), prohibits a public servant from using his or her public position for personal private gain or for the private gain of another. Under the facts given, there is no evidence of any use of public position by anyone subject to the Ethics Act to obtain the discount. Rather, it appears that the discount is a marketing device used by the company to promote sales.

Therefore it would not be a use of office for private gain for employees of the Agency to accept the discount under the terms and conditions it is offered.


Chairman