

ADVISORY OPINION NO. 98-28

Issued On December 3, 1998 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

The **Executive Director of a State Agency** asks whether it would be a violation of the Ethics Act for his agency to underwrite a wellness program which provides financial incentives to public servants who participate in the program.

FACTS RELIED UPON BY THE COMMISSION

The Agency is responsible for providing health care services to public servants. It has contracted with a private sector company to establish a workplace preventive health care program for all its members. The Agency views the program as a significant tool in reducing overall health care costs for its members.

The Agency would like to offer financial incentives to its members in an effort to enhance participation in the program. An example of such an incentive would be to give a cash award to members who attend a blood screening activity, if more than fifty percent of Agency members participate.

The Agency asks if it would be a violation for it to offer, and its members to accept, financial incentives, paid with Agency funds, for participation in programs which have been found in other venues to have greatly reduced overall operating costs.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b)(1) provides 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) provides in pertinent part that ... No official or employee may knowingly accept any gift, directly or indirectly, from ... a lobbyist or 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 prohibits public servants from using their public positions for their own private financial gain or the private financial gain of another person. This prohibition does not apply to this agency's use of its financial resources in a program intended to reduce the overall cost of agency operation, even if the program results in immediate financial gain to its members.

The Ethics Act's prohibition against public servants accepting gifts applies to gifts from interested persons, such as, lobbyists, regulated persons and vendors. It does not apply to this situation where the benefit comes from the public servants' own agency. It would not be a violation for members to accept financial inducements to participate in agency programs, even if the inducements are of more than nominal value.

It would not be a violation of the Ethics Act for the Agency to offer, and its members to accept, financial incentives to enhance participation in a workplace preventive health care program.


Chairman