

ADVISORY OPINION NO. 90-179

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

A State Superintendent of Schools

OPINION SOUGHT

- a. Whether it is a violation of the Ethics Act for a State employee to **solicit** donations for Adult Distance Learning Technology (hereafter referred to as ADLT) or partial reimbursement of ADLT expenses?
- b. Whether it is a violation of the Ethics Act for a State employee to **accept** donations for Adult Distance Learning Technology (hereafter referred to as ADLT) or partial reimbursement of ADLT expenses?
- c. Whether it is a violation of the Ethics Act for contributors from the private sector to be given appropriate recognition (acknowledgement statement followed by a list of donors) at the conclusion of ADLT programs?

OTHER FACTS RELIED UPON BY THE COMMISSION

A Partnership was formed in 1988 to plan and conduct Adult Distance Learning Technology (hereafter referred to as ADLT) activities for the agricultural community in West Virginia. ADLT utilizes satellite technology to provide interactive programming to thousands of people via downlink sites that have been identified statewide. This number does not include home satellite dishes.

The State Committee for ADLT activities in agriculture would like to take advantage of private sector resources to supplement finances needed for programming costs.

The Committee proposes the establishment of an educational, non-profit Foundation that would solicit and accept donations from businesses, organizations and individuals who wish to support the program. Such contributions would be accepted only for the general support of ADLT programs. Donations would be used to assist with production costs, uplink costs and expenses for presenters who are not on expense accounts. The Committee would maintain total control over the specific program content, thus donations would not be solicited nor accepted for planning or promoting specific programs. Such contributions would be solicited and accepted only after the State Committee had defined the program content.

The aforementioned Foundation could generate the finances to expand the number of programs offered, increase the quality of programming and broaden the clientele being served.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(c)(1) states in pertinent part that...a public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: **Provided**, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position as such is subordinate to the soliciting official or employee...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

Solicitation of Gifts

a. Pursuant to subsection 6B-2-5(c)(1) of the Ethics Act, a public employee may not solicit any gift except for a charitable purpose, or receive any direct pecuniary benefit resulting from the solicitation.

The type of solicitation which the Commission has previously sought to eliminate is the one-on-one solicitation of subordinates which affords the opportunity for coercion, undue pressure or extortion by a supervisor. "Solicitation" is defined as seeking to obtain something by direct persuasion or by petitioning persistently.

The type of solicitation contemplated in the request pertains to the private support of community programs and activities throughout the State. The Commission considers these projects to be of a charitable purpose, for the aid and benefit of the general public. This is a significant informational and educational tool provided to the agricultural communities in the State.

Therefore, it would not be a violation of subsection 6B-2-5(c)(1) of the Ethics Act for a State employee to solicit donations for ADLT or partial reimbursement of ADLT expenses.

However, the Commission would remind the ADLT public employees that pursuant to subsection 6B-2-5(c)(1) of the Ethics Act they may not solicit subordinate employees.

Acceptance of Gifts

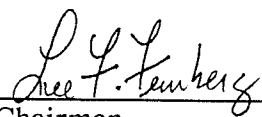
b. Subsection 6B-2-5(c)(1) prohibits a public employee from accepting a gift. In this instance, the gift would not be to a public employee but would inure to the benefit of the citizens of this State. The Commission would note that the gift is received on behalf and for the use of the ADLT.

Therefore, it would not be a violation of subsection 6B-2-5(c)(1) of the Ethics Act for state employees to accept contributions to support the ADLT which provides significant informational services and teaching programs to the agricultural communities in the State.

Private Sector Recognition

c. The Ethics Act establishes standards of conduct for all elected and appointed public officials and public employees whether full or part time, serving in any governmental entity.

The Commission assumes that the contributors from the private sector are not public employees or public officials and are not regulated by the provisions of the Ethics Act. Therefore, it would not be a violation of the Ethics Act for contributors from the private sector to be given appropriate recognition (acknowledgement statement followed by a list of donors) at the conclusion of ADLT programs since, the Ethics Act can not govern the conduct of private individuals except as it interacts with persons covered by the Ethics Act.


Chairman