

**ADVISORY OPINION NO. 92-18**  
**ISSUED BY THE**  
**WEST VIRGINIA ETHICS COMMISSION**

**ON JUNE 4, 1992**

**GOVERNMENTAL BODY SEEKING OPINION**

A County Superintendent

**OPINION SOUGHT**

- a. Is it a violation of the Ethics Act for a County School Superintendent to serve as an officer or member of the local United Way's Board of Directors and, during such service, actively solicit other public officials to organize United Way fundraising campaigns at their places of employment?
- b. Is it a violation of the Ethics Act for a County School Superintendent to serve as an officer or member of the local YMCA's Board of Directors and, during such service, actively solicit private organizations for funds for capital improvements for that YMCA?
- c. Is it a violation of the Ethics Act for a County School Superintendent to serve as an officer or member of a local Chamber of Commerce and, during such service, actively solicit private businesses for funds to support community festivals and activities designed to promote tourist spending in that community?

**FACTS RELIED UPON BY THE COMMISSION**

The requestor is the Superintendent of a County School system and would like to serve as an officer or member of the boards of several non-profit organizations in the community. During his service on these boards the requestor will either organize fund raising campaigns or directly solicit funds to sponsor the activities and goals of each organization.

**PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

West Virginia Code §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...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;
- (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

In considering this request the Ethics Commission has analyzed the facts presented in light of the statutory violations contained in the Ethics Act. The Commission has determined that there is no provision of the Ethics Act which would prohibit a County School Superintendent from serving as an officer or member of the Boards of Directors of the listed non-profit organizations in the community.

#### **Solicitation**

Pursuant to WV Code §6B-2-5(c)(1) of the Ethics Act a public official may not solicit any gift except when it meets these three criteria:

- a. The solicitation is for a charitable purpose;
- b. there is no direct pecuniary benefit conferred upon the solicitor or a member of his immediate family; and,
- c. there is no solicitation of subordinate employees.

If the requestor serves on the Board of any of the listed organizations, and is asked to become involved in solicitation activities, he should take care to avoid solicitation of subordinates and to ensure that the solicitation is for a charitable purpose.

**a. THE UNITED WAY BOARD.** WV Code §6B-2-5(c)(1) permits the solicitation of gifts for a charitable purpose provided that there is no direct pecuniary benefit conferred to the solicitor or a member of his immediate family.

As established in Advisory Opinion #90-168, the Commission considers the United Way to be an umbrella organization created for the purpose of aiding those in need, and thus it would be considered a charitable organization.

Since any contributions would be donated directly to the United Way and not to a specific individual, it is clear that there would be no resulting direct pecuniary benefit conferred upon the soliciting public official or a member of his immediate family.

Therefore, it would not be a violation of the Ethics Act for the requestor to actively solicit other public officials to organize United Way fundraising campaigns at their places of employment.

**b. THE YMCA BOARD.** As stated above, WV Code §6B-2-5(c)(1) permits the solicitation of gifts for a charitable purpose. The YMCA is a non-profit organization whose objective is to instill moral values by helping individuals build healthy minds and bodies through a variety of community activities and services which it either provides or sponsors. The Commission considers the activities of the local YMCA to be a charitable purpose as that term is used in the Ethics Act.

Since contributions would be donated directly to the YMCA and not to a specific individual, there would be no resulting direct pecuniary benefit conferred upon the soliciting public official or a member of his immediate family.

Therefore, it would not be a violation of the Ethics Act for the requestor to actively solicit private organizations or persons for funds for capital improvements for the YMCA.

**c. THE CHAMBER OF COMMERCE BOARD.** Pursuant to WV Code §6B-2-5(c)(1), a public official may not solicit any gift unless such gift is for a charitable purpose. Although the local Chamber of Commerce is a nonprofit organization, not all of its projects would be considered charitable as that term is used in the Ethics Act. Therefore, general solicitation for the Chamber of Commerce by the requestor would be prohibited.

Specific projects sponsored by the local Chamber of Commerce may be considered charitable in nature. The type of solicitation contemplated in this request pertains to the private support of community programs and activities. Even though the Commission understands that the purpose of these activities is to promote tourist spending in the community, the Commission finds that active solicitation designed to support such community festivals in order promote tourist spending is not a charitable purpose. This activity is more commercial than charitable in nature.

Therefore, it would be a violation of WV Code §6B-2-5(c)(1) for a County School Superintendent to actively solicit private businesses for funds to support community festivals and activities. However, other fund-raising projects of the Chamber of Commerce may be considered charitable in nature and should be evaluated on a case by case basis.


### **Acceptance**

Pursuant to WV Code §6B-2-5(c)(1) public officials and public employees may not accept gifts from lobbyists, vendors, persons who are regulated by their governmental agency, or any person who has a financial interest in how they perform their public duties.

However, this subsection prohibits individual public officials and employees from **personally** accepting gifts. In the situations posed by the requestor the donations would not be used for any specific public servant's personal benefit but rather for programs of non-profit organizations inuring to the benefit of the public generally.

Therefore, it would not be a violation of the Ethics Act for the public official, as an officer or member of the various boards, to accept donations on behalf of the organizations outlined in the request.

The Commission notes that in all instances of solicitation care should be taken that no gift is solicited or accepted under facts or circumstances which are improper or give the appearance of impropriety or the creation of a quid pro quo.

  
Chairman