

ADVISORY OPINION NO. 92-34

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON AUGUST 6, 1992

GOVERNMENTAL BODY SEEKING OPINION

Cabinet Secretary of a State Department

OPINION SOUGHT

1. Whether the Ethics Commission will extend the findings of Advisory Opinion #90-168 and thereby permit the State to sponsor a payroll deduction program as part of the West Virginia State Employees' Coordinated Campaign (hereinafter referred to as WVSECC) in 1992?
2. Is it a violation of the Ethics Act for the WVSECC Board members to solicit the Lottery Commission for the donation of lottery tickets to be raffled off to State employees?
3. Is it a violation of the Ethics Act for the WVSECC Board members to solicit the Division of Parks and Tourism for the donation of a weekend at a State park to be raffled off to State employees?
4. Is it a violation of the Ethics Act for the WVSECC Board members to solicit a Travel Agency for the donation of two airline tickets to be raffled off to State employees?

FACTS RELIED UPON BY THE COMMISSION

The Cabinet Secretary of a State Department also serves as the Co-Chairman of the West Virginia State Employees' Combined Campaign (hereinafter referred to as WVSECC). This campaign allows State employees to utilize a payroll deduction plan to confer charitable contributions to the United Way.

This plan was first submitted to the Commission in 1990. At that time the Commission issued Advisory Opinion #90-168 which established strict solicitation guidelines and granted approval of the campaign provided such guidelines were followed. However, this advisory opinion was limited to the WVSECC for the year 1990. The Commission granted an extension to permit the State to sponsor the WVSECC through the year 1991.

The structure of the 1992 WVSECC matches precisely the structure of the previous campaigns that have received this Commission's approval under the Ethics Act. However, three new fundraising events have been added to the program. Specifically, members of the Campaign Board plan to solicit:

1. The Lottery Commission for 500 lottery tickets;
2. The Division of Parks and Tourism for a weekend at a State park; and,
3. A travel agency for two airline tickets.

All requested donations will be raffled off to State employees in an attempt to generate greater interest in the WVSECC and increase contributions. All the proceeds from the raffles will go directly to the WVSECC for distribution to various charitable organizations.

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: **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...

ADVISORY OPINION

Payroll Deductions

1. Pursuant to WV Code §6B-2-5(c)(1) a public official may not solicit any gift unless 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.

The Commission considers the United Way to be an umbrella organization created for the purpose of aiding those in need, and thus would be considered a charitable organization.

The proposed WVSECC will be conducted in the same fashion as prior campaigns which have been approved by the Commission. Since all contributions would be deducted from payroll checks and donated directly to the United Way it is clear that there would be no resulting direct pecuniary benefit conferred upon the soliciting public official, employee or a member of his or her immediate family. Further, all employee participation is strictly voluntary.

Therefore, the Commission finds that it would not be a violation of subsection 6B-2-5(c)(1) of the Ethics Act for the United Way's West Virginia Employees' Coordinated Campaign to be implemented, as it has in past years, in the manner which consists of a voluntary payroll deduction program, for a charitable purpose, with no direct pecuniary benefits being received by the solicitors.

New Solicitations

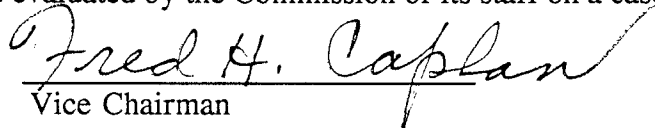
As noted above, a public official may only solicit a gift when the solicitation is for a charitable purpose, there is no direct pecuniary benefit conferred upon the solicitor or a member of his immediate family, and there is no solicitation of subordinate employees. Clearly the new fundraising events outlined in the request letter involve a charitable purpose and there is no direct pecuniary benefit conferred upon the solicitor or a member of his immediate family. Therefore, these projects are acceptable under the Ethics Act.

2. & 3. However, the Act does prohibit the solicitation of subordinates even for a charitable purpose. The Commission cautions, with regard to the second and third proposals outlined, that the WVSECC Board members may not solicit individuals at the Lottery Commission or the Division of Parks and Tourism who could be considered their subordinate employees.

4. Finally, with regard to the solicitation of a vendor which conducts business with the State, 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. Provided such care is taken, it would not be a violation of the Ethics Act for the WVSECC Board members to solicit donations from such vendors.

The judgement expressed by the Commission in this opinion relates only to the Ethics Act. The Commission expresses no opinion as to the authority of the Lottery Commission and Division of Parks and Tourism to grant the requests outlined above. The Commission therefore urges those Agencies to thoroughly explore their ability to make the requested contributions under their authorizing statutes.

This advisory opinion is limited to the West Virginia State Employees' Coordinated Campaign as described. Any variation in the structure of the campaign or the implementation of additional fund-raising projects should be evaluated by the Commission or its staff on a case-by-case basis.


Vice Chairman