

ADVISORY OPINION NO. 93-07

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON APRIL 1, 1993

GOVERNMENTAL BODY SEEKING OPINION

Vice President of an Association

OPINION SOUGHT

Is it a violation of the Ethics Act for an Association which is mainly comprised of public employees to solicit contributions to fund an Association project?

FACTS RELIED UPON BY THE COMMISSION

The Association is mainly comprised of public employees. The Association would like to solicit contributions to sponsor an Association project.

The Association is proposing a project which would establish one "computer-integrated courtroom". This system will be used to assist the association members who are public employees, attorneys and the judge participating in trials in this courtroom. The "computer-integrated courtroom" offers courtroom litigation support, computer-assisted legal research and word processing. It is a combination of hardware and software designed to accomplish specific tasks in the courtroom setting, all of which will enhance the court's efficiency in conducting business.

In order to provide courtroom litigation support, the computer-integrated courtroom allows attorneys to bring the full text of their depositions, discovery summaries, legal memoranda and other trial materials to the courtroom on diskettes and to "load" the materials into the memory of the computer that has been assigned to their side of the case. As the trial progresses, a complete record of the proceedings is stored in the computer, thus enabling the participants to study, compare and review all trial materials while the trial is in progress.

Other major aspects of the system include the availability of computer-assisted legal research for the judge and the attorneys in the courtroom. This service provides the user with a complete "computer library" which is immediately available in the courtroom and in chambers. Also, at each work station in the computer-integrated courtroom, word processing software provides the user with the ability to create correspondence, pleadings, or other documents with speed and accuracy. Similarly, the system offers "desktop utilities" which includes a large number of software programs that are available to assist the court and its staff in the discharge of routine

office tasks. Finally, the computer-integrated courtroom affords a judge the opportunity to accomplish many of his or her responsibilities at new levels of speed and efficiency.

With the passage and implementation of the Americans with Disabilities Act, courtrooms must be made accessible to the handicapped. Another benefit of the computer-integrated courtroom is that it will assist some disabled individuals of the State. In addition to the computer terminals placed at the judge's bench and the attorneys' tables, this project would provide a computer terminal for the court reporter's desk. This would allow the transcript to be entered instantly by means of the court reporter operating in "real time" reporting.

"Real Time" translation is the ability of the court reporter to use a computer-assisted stenograph machine and have the testimony of a witness appear on the computer monitor in plain english text within a matter of seconds from the time the words are spoken. This translation would improve the ability of hearing-impaired litigants, witnesses, and jurors to take part in trials.

The approximate cost of this project is \$15,000. The Association would donate some of the funds needed for this project, but does not have the resources necessary to fund the entire project. It has developed a plan of fundraising that entails soliciting donations from private law firms, handicapped associations, bar associations and others. All contributors would be honored by having their names appearing on a prominently-placed plaque. However, the Association would maintain ownership and control of the system.

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...

ADVISORY OPINION

Pursuant to WV Code §6B-2-5(c)(1) a public official or employee may not solicit any gift except for a charitable purpose. Although the Association is not governed by the Ethics Act, the members of the Association are, with only a few exceptions, public employees. The Commission determined in Advisory Opinion #92-37 that public servants may not, through private associations, perform tasks or render services that the Ethics Act prohibits those public servants from performing individually. Such use of surrogates to perform tasks that the Act otherwise prohibits would be improper.

In considering this specific request the Commission must examine the potential benefit to all parties involved. In this instance it would be impossible for the Commission or the Association to precisely quantify the relative benefits between the charitable and non-charitable purposes since the system would assist some handicapped individuals of the state and to a much greater extent, benefit court employees and officers. The hearing impaired citizens of this state would receive

some benefit from the establishment and usage of the computer-integrated courtroom system and to that end the project would be considered charitable in nature.

However, it is apparent to the Commission that this is a smaller benefit compared to the benefit enuring to the Association, court reporters, attorneys, court employees and the judge. Clearly, most of the benefit resulting from the system would not support a charitable purpose but rather would serve the interests of these individuals. Consequently, the Commission finds that the Association's plan to establish the "computer-integrated courtroom" is not a charitable purpose as that term is used in the Ethics Act.

As noted above, public servants or their surrogates may not solicit any gift except for a charitable purpose. Therefore, it would be a violation of WV Code §6B-2-5(c)(1) for an Association comprised primarily of public employees to solicit contributions to establish a "computer-integrated courtroom" system.

The Commission would note that it is the responsibility of the local governmental entities to make courtrooms accessible to the disabled individuals of this state. If this computer system is deemed to be a worthwhile tool for use in securing this objective, the Association may encourage funding from the appropriate governmental agencies.


Vice Chairman