

ADVISORY OPINION NO. 93-24

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JULY 1, 1993

GOVERNMENTAL BODY SEEKING OPINION

Director of a State Department

OPINION SOUGHT

Whether the 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 (herein after referred to as WVSECC) in 1993?

FACTS RELIED UPON BY THE COMMISSION

The Director of a State Department also serves the 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 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 has granted extensions to permit the State to sponsor the WVSECC through the year 1992.

The 1993 WVSECC matches precisely the structure of the previous campaigns that have received this Commission's approval under the Ethics Act. The requestor has stated that if there are other new fundraising events added to the program he will relate them to the Commission.

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

Pursuant to WV Code §6B-2-5(c)(1) a public official or employee may not solicit any gift unless it meets the following three criteria:

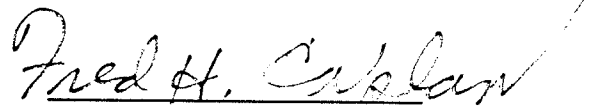
- a. the solicitation is for a charitable purpose;
- b. there is no direct pecuniary benefit conferred upon the solicitor or a member of his immediate family; and,
- c. there is no solicitation of subordinate employees.

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 WV Code §6B-2-5(c)(1) for the United Way's WVSECC 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.

This advisory opinion is limited to the WVSECC 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