

ADVISORY OPINION NO. 94-28

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON NOVEMBER 3, 1994

GOVERNMENTAL BODY SEEKING OPINION

A County Public Library

OPINION SOUGHT

Is it a violation of the Ethics Act for a County Public Library to solicit funds from the public, library employees and vendors?

FACTS RELIED UPON BY THE COMMISSION

The County Public Library plans to undertake fund raising efforts to finance the upgrading of its existing buildings as well as new construction. To this end, the library is in the process of establishing a County Library Foundation and recently employed a Director of Development. The Library would like to solicit funds for the improvement project from the public, library employees and vendors.

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...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.

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Solicitation

Pursuant to WV Code §6B-2-5(c)(1), servants may not solicit any gift unless the solicitation is for a charitable purpose. The Commission considers fund raising efforts to finance the upgrading or construction of library buildings throughout the county to be a "charitable" purpose as that term is used in the Ethics Act. Therefore, it would not be a violation of WV Code §6B-2-5(c)(1) for the Library Foundation to solicit monetary contributions from area businesses to help defray the cost of renovating its library buildings.

However, the Commission notes that the Ethics Act prohibits a public official or public employee from soliciting, even for a charitable purpose, any gift from any person whose employment position is subordinate to the soliciting official or employee. Therefore, it would be a violation of WV Code §6B-2-5(c)(1) for public library personnel to solicit any gift or donation (including those for a charitable purpose) from a subordinate employee.

Acceptance


Pursuant to WV Code §6B-2-5(c)(1) public officials and public employees may not accept any gift from persons who are seeking to conduct business with their governmental agency, 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 from **personally** accepting gifts. In this instance the requestor has stated that the donations from area business men would not be used for any specific public servant's personal benefit but to help defray the cost of renovating or expanding county library buildings. The Commission determined in Advisory Opinion #90-176, and has upheld consistently since then, that a governmental agency may accept gifts as an **entity** if the acceptance of such gifts inures to the benefit of the public generally or is in furtherance of the operation of the office.

Care should be taken, however, that no gift is solicited or accepted under facts or circumstances which are or give the appearance of impropriety or the creation of a quid pro quo. Special care should be taken with regard to contributions from employees so that no compensation or reward is attached to participation in the fund raising drive.

Therefore, it would not be violation of the Ethics Act for the county library system to accept monetary contributions from area businesses. The library may also accept **voluntary** donations from the public employees of the library.

West Virginia Code §6B-2-5(c)(1) regulates the solicitation and acceptance of gifts by **individual** public employees but does not include governmental entities in its general prohibitions. The Commission considers a gift to finance the upgrading of the public library buildings throughout the county to be acceptable since such gifts would benefit the general public.


Chairman