

ADVISORY OPINION NO. 95-37
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON OCTOBER 5, 1995

PUBLIC SERVANT SEEKING OPINION

Assistant Prosecuting Attorney and Election Committee

OPINION SOUGHT

- 1.) Is it a violation of the Ethics Act for elected officials to host fundraising events or solicit campaign contributions for a political candidate?
- 2.) Is it a violation of the Ethics Act for an Assistant Prosecuting Attorney to directly solicit campaign contributions for a political candidate?
- 3.) Is it a violation of the Ethics Act for an Assistant Prosecuting Attorney to serve as a Campaign Treasurer for a political candidate?

FACTS RELIED UPON BY THE COMMISSION

The requester serves as Campaign Treasurer for a candidate. The role of Campaign Treasurer may involve a number of responsibilities including: accepting donations to the campaign, accounting for funds received and expended in the course of the campaign, filing the necessary campaign finance and expenditure reports with the Office of the Secretary of State, expending monies during the campaign, writing letters of solicitation seeking contributions to the campaign, and general oversight and development of fund-raising efforts.

The requester inquires, on behalf of the campaign committee for this candidate, whether elected officials may host fundraising events or solicit campaign contributions for the committee's candidate. He also inquires whether he may serve as Campaign Treasurer and, if so, whether he may solicit campaign contributions for the committee's candidate.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-1-3(k) provides, in pertinent part "Thing of Value", "other thing of value", or "anything of value" means... (ix) donation or gift... or (xiii) every other thing or item, whether tangible or intangible having economic worth. "Thing of value", "other thing of value" or "anything of value" shall not include anything which is de minimis in nature nor a lawful political contribution reported as required by law.

West Virginia Code §6B-2-5(b)(1) states in pertinent part that...a public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.

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: **Provided, however**, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution.

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1.) and 2.) West Virginia Code §6B-2-5(c)(1) provides that public servants may only solicit gifts for a charitable purpose which provides no direct financial benefit to them or the members of their immediate families. Before deciding whether this provision applies to the question posed, the Commission must first determine whether a campaign contribution is a "gift" as that term is used in WV Code §6B-2-5(c)(1).

The term "gift" is not explicitly defined in the Ethics Act. However, at WV Code 6B-1-3(k) "gift" is included as part of the definition of the terms "[t]hing of value", "other thing of value", and "anything of value." This provision concludes with the statement that the definition of those terms "shall **not** include...a lawful political contribution reported as required by law."

The donation of, accounting for, and spending of campaign contributions, as well as the political activities of public servants are all regulated by the Legislature in detail elsewhere in the West Virginia Code. (See WV Code 3-8-1 et seq. and WV Code 29-6-20) This fact, along with the exclusion of political contributions from the Ethics Act definition of a "thing of value", leads the Commission to conclude that it was not the intent of the Legislature to regulate or limit the solicitation of political campaign contributions in WV Code 6B-2-5(c).

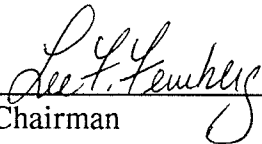
Therefore it would not be a violation of WV Code §6B-2-5(c) for a public servant, including an elected public official and a non-elected public servant such as a part-time prosecuting attorney, to solicit campaign contributions for a candidate other than himself or herself.

Similarly, it would not be a violation for a public servant to host or sponsor a campaign event for a candidate, or open his or her home for such an event, even if the event makes an admission charge or requires a donation which goes to the candidate's campaign fund. Such conduct is a legitimate form of soliciting campaign contributions for the candidate.

3.) **Service as Campaign Treasurer.** In considering this request, the Ethics Commission has analyzed the facts presented in light of the statutory violations contained in the Ethics Act. The Ethics Act does not prohibit public servants from fulfilling the responsibilities of a campaign treasurer as described above provided they are conducted on the public servant's private time and do not involve the use of public resources. Therefore, Commission determines that there is no provision of the Ethics Act which would prohibit the requester from serving as Campaign Treasurer for a candidate.

The Commission notes that this opinion is limited to an analysis of whether the Ethics Act alone would be violated by the requester's proposed conduct. This Commission is without authority to determine that conduct, acceptable under the Ethics Act, is therefore not prohibited by some other provision of the West Virginia Code. A finding by this Commission that specific conduct is not a violation of the Ethics Act does **not** grant immunity from other sanctions that may exist under the election laws or any other statute in the West Virginia Code.

The requester is cautioned to be mindful of all requirements regarding political activities by public servants and the funding of political campaigns found elsewhere in the Code.


Chairman