

## **ADVISORY OPINION NO. 2007-01**

**Issued On March 1, 2007 By The**

### **WEST VIRGINIA ETHICS COMMISSION**

#### **OPINION SOUGHT**

An **Association of Hunter Education Instructors** asks whether its member state employees may solicit donations for its safety education courses while in uniform.

#### **FACTS RELIED UPON BY THE COMMISSION**

The Association is a non-profit organization comprised of volunteer instructors. It is recognized as a tax exempt charity by the federal Internal Revenue Service in accordance with section 501(c)(3) of the Internal Revenue Code. Some of the Association's members are law enforcement officers employed by the State Agency responsible for regulating hunting activities. The Association's instructors teach the mandatory hunter safety classes required to purchase a hunting license. These classes are offered free to the public.

In addition to the regular hunter safety classes, the Association offers Special Needs Programs. These programs include a Special Needs Hunter Education Course, special hunts for hunters with disabilities, and financial assistance to hunters with disabilities to participate in hunts sponsored by private entities.

The Association relies on donations to purchase the materials necessary to teach the hunting classes. The Association asks if the member officers may, while in uniform, accompany other Association members and solicit donations from businesses including, without limitation, sporting goods stores, banks and coal companies.

#### **CODE PROVISIONS RELIED UPON BY THE COMMISSION**

W. Va. Code § 6B-2-5(b) provides 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.

W. Va. Code § 6B-2-5(c)(1) provides in pertinent part: 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.... 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 or her official duties.

### **ADVISORY OPINION**

In Advisory Opinion 95-40, the Ethics Commission ruled that an association of public servants is bound by the same ethical standards that apply to its constituent members. The Commission also ruled that an association of public servants may not perform an act which its members are prohibited from performing. Further, public servants may not use surrogates to perform activities which they are personally precluded from doing. Although the requestor Association's membership is not limited to public servants, the rule applies to its members who are subject to the requirements of the Ethics Act.

### **Donations**

The purposes for which donations from private individuals may be used depend on the amount of the donation and its source. Donations of \$25 or less may be used for any lawful purpose, assuming the donor has not directed that such gifts be used for charitable purposes. The use of donations in excess of \$25 is governed by the source of the donation. A donation from an "interested person" may only be used for charitable purposes.

"Interested persons" include lobbyists, and those who (1) do or seek to do business of any kind with an Association member's agency, (2) are engaged in activities regulated or controlled by an Association member's agency, or (3) have financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of a members' official duties.

When a regulatory government entity engages in charitable solicitations from those the entity regulates, this necessarily creates a conflict which calls for extreme caution by the entity.

### **Solicitations**

The Ethics Act prohibits public servants from soliciting gifts unless the solicitation is for a charitable purpose. A gift is something given voluntarily and without something given in return. Monetary contributions from businesses, groups or individuals fall within the definition of gifts.

Because the Ethics Act contains no definition of "charitable purpose", the Commission decides, on a case-by-case basis, which activities are charitable. Ordinarily, purchasing equipment needed by an agency to perform its official mission is not considered a "charitable purpose" under the Ethics Act. Here, however, the Agency is not specifically charged by statute with conducting the mandatory training courses; thus, it cannot be said that the safety courses are part of the Agency's official mission. Further, pursuant to W. Va. Code § 20-2-30a(b), safety educators may not charge for such course, except for "materials or ammunition consumed". Thus, the Association is unable to cover its costs by charging for the mandatory courses.

In Advisory Opinion 2005-02, the Commission established a general guideline, recognizing two main categories of programs or activities which constitute a charitable purpose: (1) Those which benefit the poor or disadvantaged; and, (2) Those which serve a public purpose or provide a significant public benefit. Clearly, a better educated hunter provides a safer environment for the public. Also, the provision of special programs for hunters with disabilities serves the disadvantaged. Thus, with regard to purchasing materials to be used in hunter education training and providing special programs for hunters with disabilities, the Commission finds that these activities involve charitable purposes for which donated funds may be used.

Although the solicitation is permissible, the Association must comply with other rules governing solicitations in order for its actions to comply with the Ethics Act. In soliciting businesses or companies, the Association should not endorse a particular product or business. This action would constitute the prohibited use of office for private gain.

### **Acceptance of Gifts**

W. Va. Code § 6B-2-5(c)(1) prohibits a public employee from accepting a gift from an interested person. In this instance, the gift would not be to a public employee but would inure to the benefit of the citizens of this State. The Commission would note that the gift is received on behalf and for the use of hunter safety classes and for the Special Needs programs.

Therefore, it would not be a violation of the Ethics Act for state employees to accept contributions to support the hunter safety education training and Special Needs programs that provide significant training programs to the hunting citizens of the State, and hunting opportunities to hunters with disabilities.

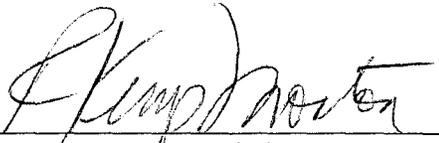
### **Solicitation While On Duty and In Uniform**

The solicitation by a State employee in uniform necessarily involves use of the prestige or influence of the public law enforcement position. Thus, the Ethics Act prohibits State regulatory officers from soliciting donations for charitable purposes while in uniform. As a result, the Commission hereby overrules Advisory Opinion 2004-07 wherein the Commission ruled that law enforcement officials could, with certain restrictions, conduct solicitations for charitable purposes while on duty and in uniform. Public servants may no longer rely on Advisory Opinion 2004-07 as precedent.

State employee members of the Association are hereby permitted to accompany other Association members and solicit donations only while out of uniform and when they are off duty. Further, public servants generally are allowed to engage in charitable solicitations of the general public, on their own time, in their private capacity.

Under no circumstances shall the Association or the State Agency provide signs, stickers, decals, or other items for display by individual donors showing whether or not a donation has been made on account of any charitable contribution solicited by or on behalf of a government entity or government employee. A mere listing of donors, however, without indication that the contribution was the result of solicitation by a government entity or employee, is permitted.

This advisory opinion is limited to questions arising under the Ethics Act, W.Va. Code § 6B-1-1 *et seq.*, and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked, or the law is changed. Further, this opinion is **prospective** only.



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R. Kemp Morton, Chairman