

ADVISORY OPINION NO. 90-23
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON FEBRUARY 16, 1990

GOVERNMENTAL BODY SEEKING OPINION

A State Delegate

OPINION SOUGHT

- a. Whether it is a violation of the Ethics Act for a State Delegate to solicit donations for a higher education trust fund, such as the "Distinguished Professors Program" to provide a supplement to professors' salaries?
- b. Whether it is a violation for State employees such as college presidents or their assistants to solicit donations for the benefit of higher education institutions?

OTHER FACTS RELIED UPON BY THE COMMISSION

As a State Delegate the requestor serves as an elected public official. Although the Delegate does not have any immediate family members attending a certain state college, he would like to continue to request private donations for the higher education trust fund of that college.

Also, the Delegate would like to know whether it is a violation of the Ethics Act for public employees such as college presidents or their assistants to solicit donations for the benefit of higher education institutions.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code section 6B-2-5(c)(1) states in pertinent part that an official or employee of the state may not solicit any gift...

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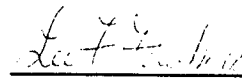
It is the Commission's opinion that the Legislature did not intend to prohibit solicitation of all gifts.

Therefore, it is not a violation of subsection (c)(1) for a public official as identified in this request to solicit gifts for the higher education trust fund since:

1. It is for a charitable purpose;
2. neither the public official, nor his or her immediate family or business with which he or she is associated receives a direct pecuniary benefit from the gift;
3. and the public official does not solicit from subordinates within his or her area of employment or service.

The Commission previously decided in advisory opinion 89-76 and believes it would be applicable in this instance, that West Virginia Code section 6B-2-5(c)(1) does not prohibit the solicitation of or application for a grant or gift to an educational institution of this state...by a public officer or public employee of the state, acting in the course of employment with the state educational institution, or acting in the conduct of the public office, where such office or employment by its very nature contemplates that such gifts or grants will be solicited or applied for from time to time.

Therefore, it would not be a violation of subsection (d)(1) for a college president or assistant (as public employees) to solicit funds for the benefit of the higher education institution that employs them.


Chairman