

ADVISORY OPINION NO. 94-01
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON FEBRUARY 3, 1994

GOVERNMENTAL BODY SEEKING OPINION

An Attorney on behalf of a County Commission

OPINION SOUGHT

Is it a violation of the Ethics Act for a County Commission to solicit private hospitals on behalf of volunteer fire departments to underwrite the cost of providing Hepatitis Serum vaccinations to the departments' personnel?

FACTS RELIED UPON BY THE COMMISSION

Volunteer fire departments are recognized by the I.R.S. as non-profit tax exempt organizations. They are also subject to guidelines mandated by the Occupational Safety and Health Administration. One such guideline is the Infection Control Policy for volunteer fire departments which requires that firefighters receive Hepatitis Serum vaccinations.

Each volunteer fire department receives a \$20,000 contribution from the County Commission to help maintain equipment and to run day to day operations. Otherwise, their monies are obtained through fund raisers. Consequently, the fire departments operate on a very tight budget and are financially unable to comply with these OSHA regulations without other assistance. The vaccinations are costly and average over \$100 per person. To that end, the County Office of Emergency Services, on behalf of the local volunteer fire departments, requested additional financial assistance from the County Commission.

Upon receiving this request, the County Commission approached two local private hospitals to underwrite the cost of the Hepatitis Serum which would be administered to approximately 179 volunteer fire department personnel. These hospitals, through their Chief Executive Officers, have tentatively agreed to sponsor the project provided the Ethics Act does not prohibit such an arrangement.

PERTINENT STATUTOEY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(c)(1) states in pertinent part that...a public official...may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official...or his or her immediate family...No official...may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official... 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), public officials or employees may not solicit any gift unless the solicitation is for a charitable purpose. The firefighters perform a vital community service on a volunteer basis and as a result are often exposed to dangerous contaminants. The Commission has determined that funding for Hepatitis Serum injections for volunteer firefighters of tax exempt organizations would be considered 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 County Commission to solicit area hospitals to underwrite the cost of providing Hepatitis Serum vaccinations to the volunteer fire department personnel.

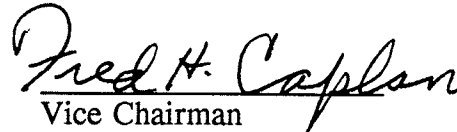
In all instances of solicitation, however, care should be taken that no gift is solicited or accepted under facts or circumstances which are improper or give the appearance of impropriety or the creation of a quid pro quo.

Acceptance

Pursuant to WV Code §6B-2-5(c)(1) public officials and employees may not accept gifts from lobbyists, vendors, persons who are regulated by their governmental agency, or any person who has a financial interest in how the public officials or employees perform their public duties.

This subsection prohibits individual public officials and employees from **personally** accepting gifts. However, in the situation posed by the requestor, the donations would not be used for any specific public servant's personal benefit but rather would inure to the benefit of the public in general and volunteer firefighters in particular.

Therefore, it would not be a violation of the Ethics Act for the County Commission to accept donations on behalf of the volunteer fire departments when such donations are used to fund the program outlined in the request.


Vice Chairman