

ADVISORY OPINION NO. 99-24

Issued On August 5, 1999 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Commission** asks whether its members and staff may solicit and accept a gift of a vehicle for use in the County's litter control program.

FACTS RELIED UPON BY THE COMMISSION

The County Commission wants to ask local auto dealers to give the Commission a free vehicle to be used in the county's litter control program. The Commission envisions offering the donor dealer the opportunity to display his name or company name on the vehicle for publicity or advertising purposes.

The County Commission hopes to save the taxpayers money by obtaining a free vehicle for use in the county's litter control program. No public servant would benefit personally from the solicitation, if it were successful.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(c)(1) provides 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:...

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The County Commission hopes the prospects of positive publicity will inspire some local auto dealer to give the Commission a free vehicle. Nevertheless, this plan does not deal with the sale of advertising in return for a vehicle. Clearly this would be a solicitation for a gift.

The Ethics Act prohibits public servants from soliciting a gift, unless it is for a charitable purpose. The Act does not define this term and where it is unclear whether a purpose is charitable, the Commission must make a decision on a case by case basis.

If the litter control program is a charitable activity, the County Commissioners and their staff may solicit for a gift of a free vehicle. If it is not, their solicitation would be a violation of the Ethics Act.

The Commission dealt with similar situations in AO 96-20, a solicitation by City personnel to buy a sound system for city council and AO 93-22, a solicitation by the County Prosecutor to buy polygraph equipment and train an operator. In each case the Commission ruled that the solicitation would not be for a charitable purpose.

In AO 93-07 the Commission ruled that a solicitation for funds to buy the software and equipment necessary to create a "computer-intergrated courtroom" would not be for a charitable purpose. While the system would provide some incidental benefit to the hearing impaired, the major beneficiaries would be the lawyers, judges and court reporters.

As a general guide, the Ethics Commission considers a charitable purpose to be one which benefits the poor or the disadvantaged. While the litter control program is an important program which benefits the public at large, its focus is not on the poor and disadvantaged. The program is not a charitable purpose. It would be a violation for the County Commissioners or their staff to solicit for this purpose.



Chairman