

ADVISORY OPINION NO. 2000-06

Issued On May 4, 2000 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **State Agency** asks if its personnel may solicit business partners, or sell sponsorships, in presenting an information technology conference.

FACTS RELIED UPON BY THE COMMISSION

The Agency is responsible for advancing the use of technology in the operation of government and in the delivery of government services to the public. It is authorized to convene conferences which will encourage utilization of technology and it plans a two day conference which revolves around an exposition or trade show affording access to the products of over one hundred vendors.

A similar conference held last year attracted an audience in excess of 800 drawn from government agencies, the education system, private business community and the public. That conference was paid for with vendor registration fees, registration fees from those attending and Agency operational funds. Budget constraints have reduced funds available from the Agency and it wants to increase private financial support from the vendors involved in the expo.

The Agency proposes that vendor registration fees be established at several increasingly more costly levels commensurate with increasing levels of service and presence at the conference. The basic registration fee would provide a display area for products and promotional materials and minimal advertising space in conference literature and materials. Each successively higher level would provide more space, additional benefits and increased advertising prominence.

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code 6B-2-5(c) *Gifts*. -- “ (1) 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 Ethics Act prohibits public servants from soliciting gifts, unless the gift is for a charitable purpose. The Agency wants to insure that the proposed sale of vendor registrations does not constitute a prohibited gift solicitation.

The Commission has consistently ruled that public servants may solicit financial support for only those programs or activities which constitute a charitable purpose. Clearly the Agency's conference is not a charitable purpose and its personnel may not solicit gifts or contributions to help underwrite conference expenses.

However, the Commission recognizes that a sales solicitation which offers value is not a solicitation of a gift. The Commission dealt with that issue in AO 95-18 when another State agency asked whether its personnel could (1) solicit private entities to co-sponsor social events or donate gifts for a regional conference of governmental agencies or (2) solicit advertising space or exhibit space at the conference.

The Commission ruled in A.O. 95-18 that the agency could not solicit co-sponsors for social events or the donation of gifts, but went on to say:

“The agency proposes to defray some of the costs of the conference by selling advertising space in the conference bulletin or program and charging exhibitors for exhibition space used at the meeting site. This will involve agency personnel soliciting advertising sales from agency vendors and persons or businesses engaged in activities regulated by the agency.

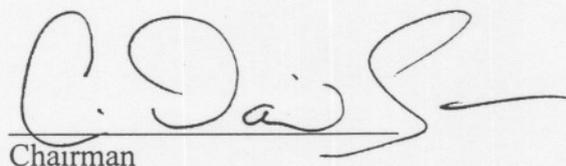
Selling advertising does not constitute soliciting a gift, unless the advertising charge is merely a contribution in disguise or the advertising, on its face, renders no real benefit to the advertiser. A commercially defensible sale of advertising or exhibit space with real commercial value does not constitute prohibited gift solicitation.”

The Commission concluded its approval of the sale of space and advertising in AO 95-18 with the following admonition which is also relevant here:

“The solicitation of proper conference advertising by agency personnel would not be a violation, if the proceeds were used only to reduce the cost of presenting the core elements of an official conference ... and the proceeds were not used directly or indirectly to provide or expand social events or other personal benefits such as meals, entertainment or gifts to those attending.”

The Commission finds that participation in what is essentially a trade show affords private sector vendors a genuine opportunity to market their products. The sale of graduated registrations is not the solicitation of a gift, but a straight forward sale of the right to participate in sales promotion of private sector products and participating vendors receive value for their fees.

The Commission rules that the solicitation of commercially defensible vendor registrations, which offer reasonable value for the fees paid, is not a violation of the Ethics Act.


Chairman