

## ADVISORY OPINION NO. 2003-05

Issued On February 6, 2003 By The

### WEST VIRGINIA ETHICS COMMISSION

#### OPINION SOUGHT

An **Association of Law Enforcement Officials** asks whether it is subject to the Ethics Act and if so, what limitations exist on how its funds may be spent on Association activities.

#### FACTS RELIED UPON BY THE COMMISSION

The Association asks whether it or its members are subject to the provisions of the Ethics Act, since it is neither an agency nor subdivision of the State, its activities are not financed by public funds and its members are not acting as employees of their respective employers while attending Association functions.

If it is subject to the Act, the Association asks if its funds, derived solely from "fund-raising activities and donations received from private individuals", may be used to pay the expenses of the monthly meeting of its Board of Directors and to pay the expenses of weekend conferences held twice a year for all Association members, their spouses, children and guests.

The first day of the conference is devoted to mandated in-service law enforcement instruction, discussion of relevant security issues and presentations by guest speakers. The second day is devoted to Association business and social activities.

#### CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code 6B-2-5(b) *Use of public office for private gain.*, provides in 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 person.

WV Code 6B-2-5(c) *Gifts.* (1) ... 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 official duties.

## ADVISORY OPINION

In A.O. 95-40 the Ethics Commission ruled that an association of public servants is bound by the same ethical standards to which its constituent members are subject. It ruled that an association of public servants may not perform an act which its members are prohibited from performing and public servants may not use a surrogate to perform activities they themselves are bound not to perform. Here, the Association's members and the Association are subject to the Ethics Act.

The Association explains that its funds are derived solely from "fund-raising activities and donations received from private individuals." It asks whether funds from these sources may be used to pay the expenses of its Board members when attending monthly meetings and of its membership when attending Association conferences held twice a year. The two sources of funds will be discussed separately.

### **Proceeds of Fund-raising Activities.**

The purposes for which fund-raising proceeds may be used will depend on the type of fund-raiser involved. Whether the Association may pay Board meeting or conference expenses turns on how the fund-raiser was conducted. Some will be subject to a provision of the Ethics Act, others not.

The Ethics Act contains a prohibition against the use of office for private financial gain. It says that public servants may not use the prestige or influence of their public positions for their own private financial gain or that of their friends, relatives, business associates or political allies.

However, public servants may use the influence of their public positions for charitable purposes or those which provide significant public benefit. For example, sales solicitations by or on behalf of law enforcement officers are an entirely appropriate and commendable way for those officers to make a contribution to the charitable needs of their communities.

Lending the influence of their positions to sales which benefit the poor and disadvantaged is the kind of conduct the public has come to associate with law enforcement officers. However, the use of the officers' prestige in sales solicitations is a use of office and it would be improper for money raised in such a way to be used by the officers for their own private gain.

Similarly, it would be improper use of office for State regulatory personnel to benefit personally from sales solicitations focused on persons they regulate. Public servants, including law enforcement personnel and those engaged in regulatory activities, may not use the influence of their positions to further sales activities from which they benefit personally. To do so would violate the Act's prohibition against the use of office for private gain.

Funds raised by the Association through activities which rely heavily on the prestige of its members may only be used for charitable purposes or those which result in significant public benefit. In A.O. 95-43 the Commission has ruled that lobbying for public interest laws and presenting training aimed at enhancing professional competence meet the significant public benefit test and could be paid for with proceeds from such sales.

The same opinion, A.O. 95-43, ruled that funds generated by a use of office could not be used to pay an association's officers a salary or its office, travel or entertainment expenses, the cost of professional services for the association or expenses associated with lobbying for health or pension benefits for association members.

In A.O. 95-18, an association of public servants proposed selling advertising associated with a conference to raise money to pay for the event. The Commission found that this fund-raiser constituted a use of office activity. It ruled that the proceeds could be used to pay the cost of core elements of the conference, but could not be used to pay for social events, personal gifts for those attending or to reduce the personal cost of attending.

Associations may engage in fund-raising activities which do not rely upon the prestige of its members. For example, the sale of raffle tickets, bake sales or car washes do not depend on or make significant use of the prestige of an Association's members. In such situations, those where there is no use of office, the money raised may be used for any purpose, even the private financial benefit of the association's members.

An association of public servants must segregate the proceeds of its fund-raising activities, if they come from different types of fund-raisers - based on whether use of office was involved. Funds generated by the use of office must be spent only for charitable purposes or those with significant public benefit. Funds generated without the use of office may be spent on any lawful purpose.

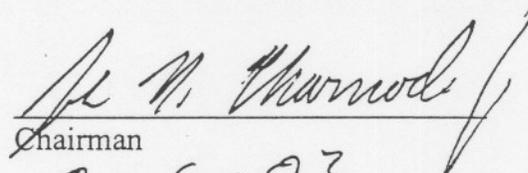
### **Donations.**

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 by the Association for any lawful purpose, assuming the donor has not directed such gifts to be used for charitable purposes.

The use of donations in excess of \$25 is governed by the identity of the donor. Donations which come from an "interested person", must be used by the Association for its charitable purposes. Donations in excess of \$25 which are not from "interested persons" may be used by the Association for any lawful purpose. A.O. 95-40.

"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. WV Code 6B-2-5(c).

In A.O. 90-172 the Commission considered the Ethics Act's rule on accepting gifts. The Commission ruled that West Virginia State Police officers "regulate every citizen and business in the State, since they enforce statewide laws which apply to all individuals and business entities." Here the Commission finds that those who are subject to laws administered by the Association's members' agencies are also regulated and therefore are "interested persons."

  
Chairman  
2-6-03