

ADVISORY OPINION NO. 2007-12

Issued on November 1, 2007 By the

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

(1) Whether the hosting of a charitable fundraising event by a nonprofit corporation constitutes lobbying for purposes of triggering the lobbyist registration and reporting requirements in the West Virginia Ethics Act when all Members of the Legislature will be invited to the event?

(2) Whether business organizations that donate to the nonprofit to underwrite the reception are required to report the donations as expenditures on their lobbyist activity reports?

(3) Whether a nonprofit corporation which is hosting a charitable fundraising event may invite members of the Legislature to the event at which food and beverages will be served, if the cost of a ticket exceeds \$25.00?

FACTS RELIED UPON BY THE COMMISSION

A nonprofit corporation has been formed for the purpose of promoting leadership in West Virginia. (hereinafter referred to as "Nonprofit"). It is primarily funded by its program participants, alumni donors and corporate sponsors. It is also associated with an organization which promotes businesses in West Virginia. (hereinafter referred to as "Business Organization.")

While it has a general association with the Business Organization, it is a separate and distinct legal entity. The Nonprofit has its own Board of Directors which is responsible for hiring the nonprofit corporation's executive director. The President of the Business Organization sits on the Nonprofit's Board. While the Nonprofit is housed in the same office space as the Business Organization, it leases the space and has its own staff.

The Nonprofit wants to hold a fundraising reception during the Legislative session. The purpose of the function is to raise money for its scholarship fund. This fund provides scholarships to program participants who otherwise may not be able to participate in the annual leadership program due to the cost of enrollment. The reception will be underwritten by various corporate and individual sponsors, including the Business Organization with which the nonprofit is associated. Food and beverages will be served at the event.

The Nonprofit normally does not communicate with members of the Legislature for the purpose of influencing legislation. Instead, its primary mission is to cultivate leadership

skills amongst citizens of WV. The Nonprofit does not receive any funding from the Legislature nor does it attempt to influence legislation. Further, it has no plans to request funds from the Legislature or to attempt to influence legislation.

The Business Organization with which it is associated does lobby and has a registered lobbyist. The Nonprofit intends to ask the Business Organization and other corporations to donate funds to the proposed fundraising reception. The Nonprofit intends to invite members of the Legislature to the reception.

Tickets to Members of the Legislature would be provided directly by the Nonprofit, not from participating sponsors such as corporations. It wants to invite Members of the Legislature because the mission of the group is to promote leadership, including leadership through government service. It considers Members of the Legislature to be examples of individuals who have taken a leadership path through their participation in the governmental process. Moreover, in part it considers extending invitations to Members of the Legislature as a form of recognition of their service, while at the same time allowing attendees at the event, which will include past participants in the Nonprofit's leadership programs, to interact with their government leaders.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code, § 6B-2-5(c)(2) provides various categories of gifts which public employees and officials may accept. The categories of acceptable gifts include:

(A) Meals and beverages;

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(C) Unsolicited gifts of nominal value or trivial items of informational value;

(E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office

W.V.C.S.R. § 158-7-4.1 reads:

For the purposes of this section "nominal" gifts means a gift with a monetary value of twenty-five dollars (\$25.00) or less. Some examples of nominal gifts include a T-shirt, hat, key chain, pen, pencil or any memento of that caliber.

W. Va. Code, § 6B-3-1 provides definitions for the following terms:

(6) "Lobbying" or "lobbying activity" means the act of communicating with a government officer or employee to promote, advocate or oppose or otherwise attempt to influence:

(i) The passage or defeat or the executive approval or veto of any legislation

which may be considered by the Legislature of this state; or

(ii) The adoption or rejection of any rule, regulation, legislative rule, standard, rate, fee or other delegated legislative or quasilegislative action to be taken or withheld by any executive department.

(8)(A) "Lobbyist" means any individual employed by a lobbying firm or who is otherwise employed or contracts for economic consideration, other than reimbursement for reasonable travel expenses, to communicate directly or through his or her agents with any elective state official, agency official or legislative official for the purpose of promoting, advocating, opposing or otherwise attempting to influence:

(i) The passage or defeat or the executive approval or veto of any legislation which may be considered by the Legislature of this state; or

(ii) The adoption or rejection of any rule, legislative rule, standard, rate, fee or other delegated legislative or quasilegislative action to be taken or withheld by any executive department.

(B) The term "lobbyist" does not include the following persons, who are exempt from the registration and reporting requirements set forth in this article, unless they engage in activities which would otherwise subject them to the registration and reporting requirements:

(i) Persons who limit their lobbying activities to appearing before public sessions of committees of the Legislature, or public hearings of state agencies, are exempt.

(ii) Persons who limit their lobbying activities to attending receptions, dinners, parties or other group functions and make no expenditure in connection with such lobbying are exempt.

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(iv) Persons who lobby without compensation or other consideration, other than reimbursement for reasonable travel expenses, for acting as lobbyists, who are not employed by a lobbying firm or lobbyist employer, and whose total expenditures in connection with lobbying activities do not exceed one hundred fifty dollars during any calendar year, are exempt. The exemptions contained in this subparagraph and in subparagraph (ii) are intended to permit and encourage citizens of this state to exercise their constitutional rights to assemble in a peaceable manner, consult for the common good, instruct their representatives, and apply for a redress of grievances. Accordingly, such persons may lobby without incurring any registration or reporting obligation under this article. Any person exempt under this subparagraph or subparagraph (ii) may at his or her option register and report under this article.

(v) Persons who lobby on behalf of a nonprofit organization with regard to

legislation, without compensation, and who restrict their lobbying activities to no more than twenty days or parts thereof during any regular session of the Legislature, are exempt. The Commission may promulgate a legislative rule to require registration and reporting by persons who would otherwise be exempt under this subparagraph, if it determines that such rule is necessary to prevent frustration of the purposes of this article. Any person exempt under this subparagraph may, at his or her option, register and report under this article.

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ADVISORY OPINION

(1) Whether the hosting of a charitable fundraising event by a nonprofit corporation constitutes lobbying for purposes of triggering the lobbyist registration and reporting requirements in the West Virginia Ethics Act?

Lobbying is defined in relevant part as the act of communicating with the Legislature to promote the passage or defeat of legislation. The Nonprofit's primary mission is leadership development and education. Historically, it has never communicated with the Legislature for the purpose of promoting the passage of legislation. Instead, the mission of the Nonprofit is to cultivate leaders, not to influence legislation.

The purpose of the proposed event is to raise money for a scholarship fund. Inviting members of the Legislature is consistent with the Nonprofit's goals of having its past and present participants interact with leaders, including government leaders.

The Ethics Commission finds that the Nonprofit does not normally engage in lobbying. However, the Commission finds that the fundraising reception is a lobbying activity for purposes of the Ethics Act because presumably it will be communicated to sponsors and the public that all Members of the Legislature are being invited and it is reasonable to assume that a substantial number of Legislators may attend since the reception is being held in a place where and when Legislative business is being conducted. Because the fundraising activity is so intertwined with Members of the Legislature being the honored guests, in the opinion of the Commission, this triggers a lobbyist registration and reporting requirement under the Ethics Act. As such, the Nonprofit should have a person register as a lobbyist on its behalf and report expenditures made on public officials at the event.

(2) Whether business organizations that donate to the nonprofit to underwrite the reception are required to report the donations as an expenditure on their lobbyist activity reports?

Business organizations which donate money to support the event do not need to report these monies as expenditures on public officials. Instead, the Nonprofit has stated that it, as the host of the event, will invite Members of the Legislature. As such the Nonprofit will capture and report these expenditures on its reports and there is no corresponding

duty imposed upon business organizations which help to underwrite the fundraising reception.

(3) Whether a nonprofit corporation which is hosting a charitable fundraising event may invite members of the Legislature to a fundraising reception at which food and beverages will be served if the cost of a ticket exceeds \$25.00?

The Ethics Act and related Legislative Rule restrict the amount of gifts which may be accepted by public officials. One such restriction is that a public official may not accept a gift or gifts valued at more than \$25.00 in the course of a calendar year from a lobbyist or other interested person. West Virginia Code § 6B-2-5(c)(2) and W.V.C.S.R. §158-7-4.

If the value of the ticket is \$25.00 or less, then a public official may accept the gift regardless of the nature of the event. However, if the value of a ticket exceeds \$25.00, then a public official may only accept the ticket in limited circumstances.

One exception is the meals and beverages exception which provides that public officials may accept a meal and beverages, regardless of the cost, if the person providing it is present. If the reception only consists of individuals gathering to eat and drink, then it falls within this exception and the Nonprofit may invite members of the Legislature, even if the value of the ticket exceeds \$25.00.

This opinion authorizes a nonprofit organization which hosts a charitable fundraising reception to provide tickets to public officials. The findings in this opinion should not be construed as authorizing a corporate sponsor of an event to buy a table at an event and then give some of its allotted tickets to public officials if the tickets cost in excess of \$25.00. Instead, if the tickets cost in excess of \$25.00, then the tickets may only come from the host. Whether a corporation or person who helps underwrite a significant portion of a charitable event becomes a host, thereby allowing it to extend free tickets in excess of \$25.00 to public officials, must be decided on a case-by-case basis.

This advisory opinion is limited to questions arising under the Ethics Act, W.Va. Code § 6B-1-1, *et. seq.*, and does not purport to interpret other laws or rules. In accordance with W.Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked, or the law is changed.


R. Kemp Morton, Chairman