

Advisory Opinion 2019-01

Issued on January 3, 2019, by

The West Virginia Ethics Commission

Opinion Sought

A **State Agency** asks whether it may solicit funds for the purpose of fostering women's health and wellness and use the solicited funds to pay for its operating expenses.

Facts Relied Upon by the Commission

The Requester's mission is to promote the welfare of women. Its statutory duties include reviewing and studying the status of women in the state; recommending methods of overcoming discrimination against women in employment; promoting the education and training of women; securing appropriate recognition of women's accomplishments and disseminating information for the purpose of educating the public about matters of interest to women.

The Requester wants to solicit funds for the purpose of fostering women's health and wellness. In furtherance of its mission, the Requester states that it:

[M]akes and reviews surveys and research; provides opportunities throughout the state to hear from women about their concerns and challenges; posts related educational information via local and social media; submits annual recommendations to the WV Governor and Legislature, and attends and provides activities, events and educational materials that promote its five public policy pillars: child well-being, domestic violence prevention, economic empowerment, education, and health.

Examples of events the Requester organizes are a day for women and girls at the Legislature, candidate training workshops and wellness events.

The Requester states that the Legislature has not provided an appropriation to it for this fiscal year and that the Agency has limited resources. The Requester wants to solicit funds for its operating expenses, which include "office rent, telecommunications, travel, association dues, conference fees, grant writer expense, salaries, parking, copier lease, computers, Office of Technology fees, postage and office supplies."

Provisions Relied Upon by the Commission

W. Va. Code § 6B-2-5(b) provides, in pertinent part:

(1) 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. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

W. Va. Code § 6B-2-5(c)(1) provides, in relevant part:

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.

W. Va. Code R. § 158-7-6 (2008) provides, in relevant part:

6.1. Public officials and public employees may solicit gifts for a charitable purpose when there is no resulting direct pecuniary benefit to the public official or public employee or an immediate family member.

6.2. The Ethics Commission may recognize programs or activities as involving a charitable purpose on a case-by-case basis.

. . . .

6.7. State government agencies and the governing bodies of political subdivisions may solicit funds to support or underwrite agency programs which are statutorily created or authorized and are intended to help the poor and disadvantaged.

If a state government agency or governing body of a political subdivision seeks to solicit funds for use by the agency for any other purpose, then the state government agency or governing body of a political subdivision must first seek permission from the Executive Director of the West Virginia Ethics Commission or the Ethics Commission through issuance of a formal advisory opinion. The Executive Director or Ethics Commission may only authorize such a solicitation if it serves a public purpose. . . .

Advisory Opinion

The Ethics Act prohibits public employees and officials from soliciting gifts unless the gift is for a charitable purpose for which there is no resulting direct pecuniary benefit to the public official or public employee or his or her immediate family member. See W. Va. Code § 6B-2-5(c).

The Commission's Legislative Rule, W. Va. Code R. § 158-7-6 (2008), which specifically governs using solicited funds for agency programs, provides that "[s]tate government agencies and the governing bodies of political subdivisions may solicit funds to support or underwrite agency programs which are statutorily created or authorized and are intended to help the poor and disadvantaged." *Id.* **Upon reviewing the Requester's statutory mission and duties, the Commission finds that the Legislature has authorized the Requester to administer programs intended to foster women's health and wellness.**

The next question is whether the programs administered by the Agency are intended to "benefit the poor and disadvantaged" for purposes of W. Va. Code R. § 158-7-6. Prior to the passage of W. Va. Code R. § 158-7-6 in 2008, the Commission issued several Advisory Opinions that evaluated whether programs were intended to help the poor and disadvantaged. The Commission, for example, approved solicitations for public health programs (Advisory Opinion 2005-02), programs that benefit disadvantaged youth (Advisory Opinion 1996-36), and a health care program for disadvantaged children (Advisory Opinion 1999-37).

The Legislative purposes for the Agency include overcoming discrimination against women in employment and enabling women to develop their skills, continue their education and be retrained. The Requester states that the Agency's policy pillars are child well-being, domestic violence prevention, economic empowerment, education, and health. The Commission finds that the Legislature created the Agency primarily for the purpose of benefiting poor and disadvantaged women in the state. **The Ethics Commission finds, therefore, that pursuant to W. Va. Code R. § 158-7-6 (2008), solicited funds may be used by the Agency for operating expenses incurred in administering its programs. The Agency may not, however, have a public official or employee solicit funds for his or her own salary as this action would result in a direct pecuniary benefit to a public official or public employee.**

This Advisory Opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester must contact the Ethics Commission for further advice as it may alter the analysis and render this Opinion invalid. This Advisory Opinion is limited to questions arising under the Ethics Act, W. Va. Code §§ 6B-1-1 through 6B-3-11, 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.


Robert J. Wolfe, Chairperson
West Virginia Ethics Commission