

Advisory Opinion 2020-11

Issued on September 3, 2020, by

The West Virginia Ethics Commission

Opinion Sought

A **Town Clerk** asks whether town officials and employees may solicit funds from individuals and businesses to help pay for a veterans memorial.

Facts Relied Upon by the Commission

A Town is planning to construct a veterans memorial on property that will be leased to the Town by a state agency. The veterans memorial would list the names of people who served in the United States Armed Forces from the Town and surrounding area on three monuments in the shape of stone tablets placed in a chevron pattern. The names of veterans who were killed in action or prisoners of war would be listed on the central tablet. The remaining veterans would be listed on the two outside tablets.

The Town has budgeted a certain amount of funds for the construction of the veterans memorial, but those funds account for only a portion of the total estimated construction cost. The Requester wishes to raise the remaining funds by soliciting donations from individuals and businesses and by applying for grants.

Provisions Relied Upon by the Commission

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

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 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.

6.3. It is improper for a public official or public employee to solicit any gift or donation, including those for a charitable purpose, from a subordinate employee

W. Va. Code R. § 158-7-7 provides in relevant part:

7.1. Public officials, public employees and agencies who regulate individuals or businesses may not orally solicit donations from:

a. Persons under the regulatory control of the agency. A person is under the regulatory control of the public official, employee or agency if the person has a matter pending before the agency or had a matter pending within the past 12 months. This subsection does not apply to purely law enforcement agencies, officials or employees who do not actually regulate or exercise regulatory control over other persons but merely enforce existing laws and rules as to all applicable persons;

b. A vendor which has a contract with the agency, is bidding on a contract or is in the process of soliciting business from the agency.

7.2. A written solicitation to the public or business community at large, even if the targeted group may encompass regulated persons or vendors, is permissible; Provided, That the written solicitation may not be directed solely to persons under the regulatory authority of, or vendors, of the public official, employee or agency. This subsection does not apply to purely law enforcement agencies, officials or employees who do not actually regulate or exercise regulatory control over other persons but merely enforce existing laws and rules as to all applicable persons.

7.3. Solicitations should be conducted, and acknowledgements made, in a fair and even-handed manner. Each solicitation should contain a statement setting forth that donations are purely voluntary.

7.4. Under no circumstances should anyone soliciting a contribution for a charitable purpose state that contributors will receive some special

treatment from a government agency or its employees, or any other sort of quid pro quo as a consequence of making a donation.

Advisory Opinion

The Ethics Act prohibits a public employee or official from soliciting gifts unless the solicitation is for a charitable purpose from which there is no resulting direct pecuniary benefit to the public official or public employee or his or her immediate family member. W. Va. Code § 6B-2-5(c).¹ The Ethics Commission recognizes programs as charitable on a case-by-case basis. See W. Va. Code R. §§ 158-7-6.1 and 6.2. “[T]he Commission [has] recognized two main categories of programs or activities which constitute a charitable purpose: (1) Those which benefit the poor or disadvantaged; and, (2) Those which serve a public purpose or provide a significant public benefit.” Advisory Opinion 2014-01 (citing Advisory Opinion 2005-02); W. Va. Code R. § 158-7-6.7.

In Advisory Opinion 1995-17, the Commission found that a county historic landmark commission’s solicitation of donations to purchase a statue for the county courthouse lawn was for a “charitable purpose” as that term is used in the Ethics Act. See also Advisory Opinion 2016-16 (soliciting donations for the maintenance of the West Virginia Fallen Firefighter Memorial was for a “charitable purpose”) (citing Advisory Opinion 2000-39). The instant request is similar to the request in Advisory Opinion 1995-17.

The Ethics Commission holds that the veterans memorial serves the public purpose of recognizing our veterans who risked their lives to protect our country. Therefore, for purposes of the Ethics Act, the construction of a veterans memorial is a charitable purpose for which the town officials and employees may solicit donations. Town officials and employees must comply with the manner of solicitation limitations found in W. Va. Code R. §§ 158-7-6 and 158-7-7 when they solicit these donations.

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, at 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.

/s/ Robert J. Wolfe
Robert J. Wolfe, Chairperson
WV Ethics Commission

¹ There is nothing in the Request for an Advisory Opinion that suggests town officials or employees who would solicit donations would benefit from them.