

Advisory Opinion 2019-19

Issued on September 5, 2019, by

The West Virginia Ethics Commission

Opinion Sought

A **County Commission** asks whether it may accept a donation of materials and labor from a local business to tint windows of its judicial annex when a deputy sheriff contacted the business regarding the windows.

Facts Relied Upon by the Commission

The Requester owns a judicial annex that houses the County's Circuit Court, Circuit Clerk, Magistrate, Family Court, Probation Office, Drug Court and Sheriff's Office. The Requester states that a deputy sheriff contacted a local business regarding tinting windows of the Sheriff's offices in the annex. The Requester is unaware whether the deputy solicited the local business to donate its materials and time to tint the windows or whether the business offered to provide the service of its own accord. The Requester states that the deputy informed the Requester that the business is willing to donate both materials and time to tint seven windows. The Requester additionally states that all the windows of the Sheriff's offices are already tinted. According to the Requester, the deputy believes that additional tinting will reduce heat infiltration.

The Requester asks whether it is ethical for the County to accept the donation and whether acceptance creates or gives an impression of a quid pro quo scenario or other impropriety.

Provisions Relied Upon by the Commission

W. Va. Code § 6B-2-5(c)(1) states, 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: Provided, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position is subordinate to the soliciting official or employee: Provided, however, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution.

W. Va. Code R. § 158-7-6 states, 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.

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6.4. In soliciting a gift for charity in either their personal or official capacities, public officials and employees may use their titles; Provided, That law enforcement officers are subject to the limitations in section 8.

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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. This provision does not apply to the solicitation of donations by a member of the Legislature or a member of the Board of Public Works who is soliciting funds for a regional or national organization conference or other function in accordance with W. Va. Code §§6B-2-5(c)(6) and 6B-2-5(c)(7).

6.8. Fund-raising activities based on an exchange of value are not gift solicitations and are permissible.

6.9. Raising funds for public employees seriously injured or killed while in the line of duty, and their affected family members, constitutes a charitable activity for purposes of the Ethics Act.

W. Va. Code R. § 158-7-8 states, in relevant part:

8.1. The Ethics Commission finds that the interest of the public is served by having stricter limitations which govern solicitations by law enforcement officers due to the unique nature of the authority which law enforcement officers exercise over the public, including arrest powers.

8.2. "Law-enforcement officer" means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and

order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality thereof.

8.3. Except as otherwise provided for in these rules, law enforcement officers may not solicit for charity while in uniform, but may show identification upon request.

8.4. Public officials or employees may solicit donations for charity while out of uniform and when they are off duty.

....

8.6. Law enforcement officers or associations composed of law enforcement officers may conduct telephonic or oral solicitations in their official capacity; Provided, That, when conducting a telephonic solicitation, law enforcement officers may not identify themselves by rank or title or otherwise reference their rank or title during the conversation unless specifically requested by the person with whom they are having a conversation.

8.7. Law enforcement officers may not pick up a donation while in uniform except as otherwise provided for in these rules.

8.8. Law enforcement officers may wear their uniforms while participating in fund-raising activities based on an exchange of value. Further, they may wear their uniforms while participating in a fund-raising event such as a motorcycle ride, walk or other activities where the public, for a fee or donation, is invited to join a law enforcement officer as part of a fund-raising activity for charity.

8.9. Law enforcement officers may deliver proceeds raised for charity to the intended recipient while in uniform and while on duty.

Advisory Opinion

The Ethics Act does not per se prohibit agencies from accepting unsolicited donations. As the Commission held in Advisory Opinion 1990-176, government agencies may accept gifts as an entity if the acceptance of such gifts inures to the benefit of the public generally or is in furtherance of the operation of the office. "The key is that the gift is given to, and utilized by, the government agency, and is not for the personal, private gain of a particular public servant." Advisory Opinion 2012-08.

Accordingly, the County Commission could accept the unsolicited donation of time and materials to tint seven windows of the judicial annex because the donation would be utilized by the Requester and not for the personal, private gain of a public official or employee. The Requester states, however, that a deputy sheriff was in contact with the

business regarding tinting windows. The Requester was unable to state the precise nature of the contact between the business and the deputy.

If the deputy solicited the local business for the donation, a different analysis applies. 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. W. Va. Code § 6B-2-5(c)(1). Additionally, “previous precedential advisory opinions have acknowledged the permissibility of otherwise prohibited solicitations when there is express statutory authority for a public entity to solicit private funds” Advisory Opinion 2014-01.

The Ethics Commission is unaware of any statutory authority authorizing the Requester to solicit private funds for this purpose. Therefore, the donation must be charitable for the solicitation to be permissible under the Act.

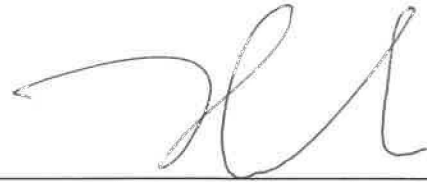
“The Ethics Commission may recognize programs or activities as involving a charitable purpose on a case-by-case basis.” W. Va. Code R. § 158-7-6.2. “As a general guideline, the Commission recognizes two main categories of programs or activities which constitute a charitable purpose: (1) Those which benefit the poor or disadvantaged; and, (2) Those which serve a public purpose or provide a significant public benefit.” Advisory Opinion 2005-02.

In Advisory Opinion 2012-08, the Ethics Commission held that a municipal police department was prohibited from soliciting funds for purchasing shotgun/rifle racks because the racks did not constitute a charitable purpose. The Commission reasoned that “[i]n seeking outside monetary assistance, . . . public agencies raise the potential for a coercive solicitation” and that the Commission “has been stringent in its holding that the overriding purpose of the solicitation must be to provide a benefit to the public as opposed to defraying the internal administrative costs of the [Agency].”

Similarly, the Ethics Commission finds here that tinting windows of the judicial annex which are already tinted does not benefit the poor or disadvantaged or otherwise provide a significant public benefit. Therefore, this does not constitute a charitable purpose for which a public official or employee may solicit. If the donation from the local business was solicited by the deputy, the Ethics Commission holds that the Requester may not accept the donation.

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.

A handwritten signature in black ink, appearing to read 'L. Tweel', written over a horizontal line.

Lawrence J. Tweel, Acting Chairperson
West Virginia Ethics Commission