

Advisory Opinion 2023-10

Issued on September 7, 2023, by

The West Virginia Ethics Commission

Opinion Sought

A **Director of a City Arts and Cultural Development Department** asks whether City officials and employees may solicit donations via GoFundMe or similar crowdsourced funding for a public concert series and other events held at the City's outdoor amphitheater.

Facts Relied Upon by the Commission

The Requester is the Director of a City Arts and Cultural Development Department that operates a City park with an outdoor amphitheater which seats over 1,500 people. The City hosts free, live music events in the summers. These concerts and other events are largely funded by the City and a charitable trust. The City also receives grants for these programs from the West Virginia Department of Arts, Culture, and History; the County, and the local convention and visitors' bureau. Finally, the City receives sponsorships from local businesses.

The concerts draw audiences from throughout the county, state, and region. Around 30,000 to 40,000 people attend the events annually, and individuals have often expressed an interest in making contributions to help support the concerts and the other programming at the amphitheater.

The City is considering using "crowdfunding¹," such as GoFundMe, to support future events and programs at the amphitheater. If allowed to do so, any funds contributed would be used exclusively to support programs and events presented by the City for the public.

Code Provisions Relied Upon by the Commission

W. Va. Code § 6B-2-5(b)(1) provides:

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

¹ "Crowdfunding is the practice of collecting money from multiple individuals or sources in order to finance a new project. Often, crowdfunders turn to social media to share their platform or idea with the purpose of inspiring others to contribute to the crowdfunding campaign." Wix Blog [What is crowdfunding and how does it work?](#) accessed August 11, 2023.

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.

6.3. 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.

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.

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

W. Va. Code R. § 158-7-7 (2008) provides:

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; and,

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

Soliciting donations

The Ethics Act prohibits public employees and officials 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).² See also [W. Va. Code R. §§ 158-7-6.1 and 6.2](#) (2008). The Ethics Commission has recognized “two main categories of programs or activities that 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](#)).

In [Advisory Opinion 1996-19](#), the Commission held that a city’s park board members may solicit donations in order to maintain a public city pool. The pool’s operating expenses were not fully offset by the pool’s revenues from admission fees and activities. The Commission determined that “the operation of municipal recreation facilities does benefit the public at large, especially the children of the area, and as such the project does constitute a ‘charitable purpose’ as that term is used in the Ethics Act.”

² There is nothing in the Request for an Advisory Opinion that suggests town officials or employees who would solicit donations would benefit from them.

More recently, in [Advisory Opinion 2020-11](#), the Commission held that "the construction of a veterans memorial is a charitable purpose for which the town officials and employees may solicit donations." The Commission relied on the following Advisory Opinions in reaching its holding: [Advisory Opinion 1995-17](#), (a county historic landmark commission's solicitation of donations to purchase a statue for the county courthouse lawn was for a charitable purpose); and [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 Commission holds that the outdoor concert series and similar events at the City's amphitheater serve a charitable purpose under the Ethics Act, and, therefore, City officials and employees may solicit donations for these events via GoFundMe or similar crowdsourced funding. The City 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. The City states that it may use crowdfunding, such as a GoFundMe drive, to solicit and accept donations. The City should seek advice from its accountant or the Auditor's Office regarding applicable rules governing the receipt of electronic donations by government agencies through these types of computer applications.

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 §§ 68-1-1 through 68-3-11 and does not purport to interpret other laws or rules.

In accordance with W. Va. Code § 68-2-3, 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/ Terry L. Walker

Terry L. Walker, Acting Chairperson
West Virginia Ethics Commission