

ADVISORY OPINION NO. 2005-15

Issued On October 6, 2005 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A County Commissioner asks the following questions:

- (1) Is it permissible for a county to contract with a third-party vendor to produce and sell a calendar with pictures of its elected officials and employees, and then direct a percentage of the proceeds to a non-profit corporation?
- (2) May checks for the calendar purchases be sent to a county P.O. Box and then forwarded to the private vendor?
- (3) May proceeds from the sale of the calendar be used to purchase items or fund trips in support of the elected official?

FACTS RELIED UPON BY THE COMMISSION

An elected county official may contract with a third party vendor to produce and sell a calendar. The calendar would feature pictures of the elected county official and his employees. The proceeds from the sale of the calendar, after a fee is paid to the vendor, would be directed to a non-profit corporation. No information is provided concerning the nature of the non-profit or its stated mission.

The vendor would solicit local businesses to buy the calendars. Checks from the purchase of the calendars would be sent to the county's P.O. Box. Upon receipt a county employee would forward the checks to the vendor. The requestor states that there would be no specific accounting system in place to track the amount of checks received at the P.O. Box.

Once the non-profit receives the funds, the funds may be used to purchase items and/or to fund trips in support of the elected official. No specific information is provided concerning which items the county may purchase.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

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

W.Va. Code 6B-2-5(c) *Gifts*. – (1) 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...

ADVISORY OPINION

Contracting with Third-Party Vendor and Use of Image on Calendars for Financial Support of a Non-Profit Corporation

The Ethics Act contains a prohibition against the use of office for private financial gain. It says that public servants may not use the prestige or influence of their public positions for their own private financial gain or that of their friends, relatives, business associates or political allies. However, public servants may use the prestige or influence of their public positions for charitable purposes or those which provide significant public benefit.

The use of pictures of the County Commissioner and his employees on the calendars would be appropriate provided that the proceeds from the calendars are used for a charitable purpose. Further it is appropriate to contract with a vendor to facilitate the project if the overriding benefit is to a charity not the vendor.

The requester states that the proceeds will be directed to a non-profit organization. Merely because a business or organization bears a non-profit designation does not equate to a finding that the organization or anticipated expenditures are for a charitable purpose as defined by the Ethics Commission in its past advisory opinions.

Because the Ethics Act contains no definition of "charitable purpose", the Commission must decide, on a case-by-case basis, which activities are charitable. 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. In past opinions, the Commission has held that the following programs or activities fall within these categories: Purchasing equipment to provide cardiopulmonary resuscitation (CPR) training or purchasing equipment and materials to be used in such training (Law enforcement association, A.O. 2004-07); Purchasing bullet proof vests (Law enforcement association, A.O. 2004-07); A conference on Adult and Elder Abuse and Neglect (Committee of State and County Public Servants - A.O. 94-14); An information booth promoting environmental protection and conservation. (State agency - A.O. 95-29); Programs to benefit disadvantaged youth (City Recreational Department - A.O. 93-08); Scholarships for the poor or disadvantaged (Association of public servants - A.O. 96-36); A bicycle safety program (City Chief of Police - A.O. 97-19); and, A program aimed at providing health care services to financially disadvantaged children (State Health Care Agency - A.O.. 99-37).

If the funds are expended by the non-profit for the same or similar purpose as those listed above, then the sale solicitations and subsequent expenditures are permissible. If the contemplated expenditures are not substantially similar to the examples provided, then the requestor needs to contact the Ethics Commission to obtain guidance regarding whether a proposed expenditure is appropriate.

Use of County's P.O. Box

Under the circumstances presented, there is no restriction against using the P.O. Box. The use of the P.O. Box is *de minimis* and hence permissible.


The requestor suggests that there may be no accounting by the county of how much money is received and then subsequently forwarded to the vendor. The Commission has no jurisdiction to render advice concerning what constitutes an acceptable accounting or auditing practice. While the funds are not public monies, they are being procured from the public by using the goodwill of an elected official and his employees. Hence care should be exercised to ensure that the monies are not misappropriated.

Purchase of Items and Funding of Trips

As set forth above, items may only be purchased if they provide a significant public benefit or are charitable in nature. The Commission cautions the county against using the funds to defray internal administrative costs (A.O. 2005-02).

The requestor also inquires whether the money may be used to fund trips. The money may not be used for the elected official's travel expenses unless the requestor can demonstrate that the travel is directly related to a charitable purpose. Normally the payment of travel expenses would not be permissible. If the requestor intends to use any of the money for travel, he should contact the Ethics Commission to ensure that the proposed expenditure is acceptable.

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.


Chairman