

ADVISORY OPINION NO. 2005-02

Issued On April 7, 2005 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A County Board of Health asks whether it may solicit funds from local businesses, groups or individuals to supplement public health programs.

FACTS RELIED UPON BY THE COMMISSION

A county or city may establish a local board of health in accordance with the provisions of W.Va. Code § 16-2-1 *et. seq.* The legal powers and duties of local boards of health include: protecting the health and safety of citizens of West Virginia, establishing and operating basic health services and programs, adopting rules consistent with state public health laws, assessing and collecting fees for permits and licenses, and enforcing the public health laws of this state. W.Va. Code 16-2-11.

CODE PROVISIONS RELIED UPON BY COMMISSION

W.Va. Code 6B-2-5 (b)(1) 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. 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© *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...

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The Ethics Act prohibits public servants from soliciting gifts unless the solicitation is for a charitable purpose. A gift is something given voluntarily and without something given in return. Monetary contributions from local businesses, groups or individuals fall within the definition of gifts. The County Board of Health may solicit monetary contributions if the proceeds will be used for a charitable purpose.

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 exceptions: 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. (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).

Based upon its past opinions, the Commission finds that public health programs, which serve to protect the health and safety of West Virginia citizens, fall within the categories of activities or programs which are charitable. While funds which are received through solicitations may be used to support these programs, 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 Board of Health. (See A.O. 95-43)

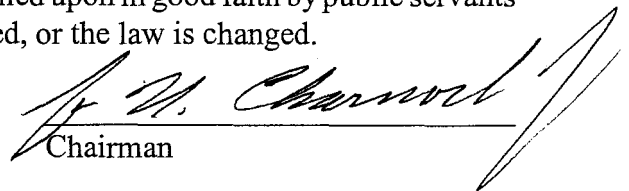
Even if the solicitation is permissible, the Board of Health must comply with other rules governing solicitations in order for its actions to comply with the Ethics Act. In soliciting businesses or companies, the Board of Health should not endorse a particular product or business. This action would constitute the prohibited use of office for private gain.

The Board of Health also regulates individuals and businesses. To avoid an appearance of conflict, members of the Board of Health and its employees should not orally solicit donations from individuals or businesses which the Board of Health regulates. A written solicitation to the public or business community at large, even if the targeted group may encompass regulated individuals or entities, would be permissible. The written solicitation may also be in the form of a newspaper advertisement.

Any solicitations should be conducted and acknowledgments made in a fair and evenhanded manner. Each solicitation should contain a statement setting forth that donations are purely voluntary. Further, the Board of Health should not accept donations from any businesses or individuals against which the Board of Health has a pending enforcement proceeding or action.

In conclusion, it would not be a violation of the Ethics Act for the County Board of Health to solicit funds for public health programs, provided that the solicitations are conducted in a manner which is consistent with the guidelines summarized herein.

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