

ADVISORY OPINION NO. 2004-24

Issued On December 2, 2004 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **State Agency** asks if it may sell advertising to defray the cost of publishing a quarterly newsletter it sends to vendors and regulated employers.

FACTS RELIED UPON BY THE COMMISSION

A State Agency is developing a quarterly newsletter for distribution to vendors and regulated businesses. The agency is proposing to offset the cost of publication by selling advertising in the newsletter to these same entities. Advertising would not be accepted from vendors who are barred or suspended from doing business with the agency, or from employers who are in a delinquent status.

The requester notes that at least one other State Agency currently publishes a magazine that accepts advertising from private businesses. In addition, the agency's counterpart in a neighboring state publishes a quarterly magazine containing commercial advertising.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(c), *Gifts*, provides: “(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 gift is for a charitable purpose. The Agency wants to insure that the proposed sale of advertising is not a prohibited gift solicitation.

The Commission has consistently ruled that public servants may only solicit financial support for those programs or activities which constitute a charitable purpose. Clearly, the Agency's newsletter is not a charitable purpose and its personnel may not solicit gifts or contributions to help underwrite publication of a newsletter.

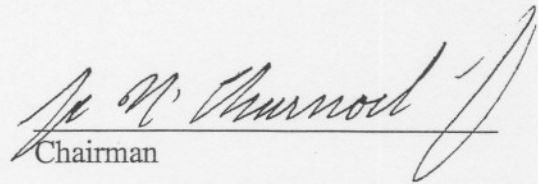
However, the Commission previously recognized in Advisory Opinions 2000-06 and 95-18 that a sales solicitation offering something of value is not a solicitation of a gift. In A.O. 95-18, the Commission determined that State agency personnel could solicit interested persons to purchase advertising space or exhibit space at a conference. In that opinion, the Commission stated:

"The agency proposes to defray some of the costs of the conference by selling advertising space in the conference bulletin or program and charging exhibitors for exhibition space used at the meeting site. This will involve agency personnel soliciting advertising sales from agency vendors and persons or businesses engaged in activities regulated by the agency.

Selling advertising does not constitute soliciting a gift, unless the advertising charge is merely a contribution in disguise or the advertising, on its face, renders no real benefit to the advertiser. A commercially defensible sale of advertising or exhibit space with real commercial value does not constitute prohibited gift solicitation."

There is no material difference between a conference bulletin or program for an agency-sponsored conference and an agency newsletter distributed to vendors and other interested persons. Accordingly, the Commission finds that the proposed sale of advertising in a periodic newsletter, which offers reasonable value for the expense, would not be a prohibited gift solicitation in violation of the Ethics Act.

The State Agency may properly exclude barred or suspended vendors and delinquent businesses from advertising in its newsletter. The Agency should consider including a disclaimer in its newsletter which states that the appearance of advertising in the publication should not be construed as an endorsement of any particular vendor or product.


Chairman