

ADVISORY OPINION NO. 99-37

Issued On December 2, 1999 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **State Health Care Agency** asks if it may solicit private sector businesses for gifts of items to be distributed along with materials promoting an agency program.

FACTS RELIED UPON BY THE COMMISSION

The Agency administers a federally funded program which provides health care services to the children of financially disadvantaged families. One facet of the program focuses on newborns and the Agency's outreach personnel visit the homes of newborns to acquaint the parents with the program and encourage the enrollment of their children.

To assist its personnel in promoting the program, the Agency distributes packets of information, growth charts, refrigerator magnets with the Agency's phone number and free gifts. The Agency's budget is limited and it hopes to obtain support for its promotional packets from private businesses which market to children in the age group served by the program.

As an example, the Agency has designed a baby book which provides a broad range of information on topics such as SIDS, lead poisoning, immunizations, nutrition, etc... for distribution to new mothers. It appears that publication costs will be prohibitive, without outside support. The Agency would also like to solicit contributions of consumer products, such as diapers, bibs, and baby food, to make its promotional package more useful and attractive.

Donors would be acknowledged for their contributions and gift items would probably include those bearing the manufacturer's label. If solicitation were permitted, all reputable businesses and manufacturers would be afforded an opportunity to participate and none would be given preferential treatment in the acknowledgment given its donations.

WV CODE PROVISIONS RELIED UPON BY COMMISSION

WV 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.

WV 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...

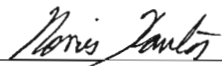
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The Ethics Act provides that public servants may not solicit a gift unless it is for a charitable purpose. Agency personnel may not solicit financial support for the agency's promotional activities from any source, unless those activities constitute 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. Generally speaking those which benefit the poor or disadvantaged are charitable. In this instance the program applies only to the children of financially disadvantaged families. It is clearly a charitable purpose and it would not be a violation of the Ethics Act for agency personnel to solicit support for the program.

The Agency has expressed concern that its acknowledgment of support from private sector donors and its distribution of name brand products could be considered an endorsement of a particular product or business or a prohibited use of office for private gain.

Solicitations conducted and acknowledgments made in a fair and even handed manner should not suggest endorsement and would not be a violation of the Ethics Act prohibition against the use of office for private gain.



Chairman