

**ADVISORY OPINION NO. 94-26**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON SEPTEMBER 1, 1994**

**GOVERNMENTAL BODY SEEKING OPINION**

Cabinet Secretary of a State Department

**OPINION SOUGHT**

Will the Ethics Commission extend the findings of Advisory Opinion #92-34 and thereby permit the State to sponsor a payroll deduction program as part of the West Virginia State Employees' Coordinated Campaign (herein after referred to as WVSECC) in 1994?

**FACTS RELIED UPON BY THE COMMISSION**

The Cabinet Secretary of a State Department also serves as the Chair of the West Virginia State Employees' Combined Campaign (herein after referred to as WVSECC). The campaign allows State employees to utilize a payroll deduction plan to confer charitable contributions to the United Way.

All State employees will be provided a list of the various United Way agencies within the State which may be designated by the employee as the recipient of his or her contribution. In addition the local United Way agency in the employee's geographic area will provide a list of constituent charities which may be specifically designated.

At all times, every official or employee involved in the program will understand and stress that: 1) state employee participation in the campaign is strictly voluntary, 2) any employee's refusal to participate in the campaign will not in any way affect his or her employment status, 3) as a general rule, actual solicitation of employee contributions will only be made on a peer-to-peer basis, and 4) in those limited situations where peer-to-peer solicitation is not possible, a supervisor distributing campaign information to his or her subordinate employees will be allowed to act only as a vehicle to provide information, but not to directly solicit, participation in the campaign.

This plan was first submitted to the Ethics Commission in 1990. At that time the Commission issued Advisory Opinion #90-168 which established strict solicitation guidelines and granted approval of the campaign provided such guidelines were followed. The Commission has granted an extension to permit the State to sponsor the WVSECC through the 1993 - 1994 campaign.

The requestor has stated that this years campaign matches precisely the structure of the previous campaigns that have received this Commission's approval under the Ethics Act. A request is also made for clarification as to whether employees of WV University may also participate in the WVSECC.

### **PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

West Virginia Code §6B-2-5(c)(1) states in pertinent part that...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: **Provided**, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position as such is subordinate to the soliciting official or employee...

### **ADVISORY OPINION**

Pursuant to WV Code §6B-2-5(c)(1), a public official may not solicit any gift unless it meets these three criteria:

- a. the solicitation is for a charitable purpose;
- b. there is no direct pecuniary benefit conferred upon the solicitor or a member of his or her immediate family; and
- c. there is no solicitation of subordinate employees.

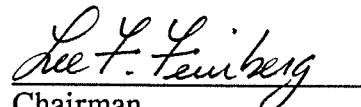
The Commission considers the United Way to be an umbrella organization created for the purpose of aiding those in need, and thus would be considered a charitable organization.

The proposed WVSECC will be conducted in the same fashion as prior campaigns which have been approved by the Commission. Since all contributions would be deducted from payroll checks and donated directly to United Way, it is clear that there would be no resulting direct pecuniary benefit conferred upon the soliciting public official, employee or member of his or her immediate family. Further, all employee participation is strictly voluntary.

Therefore, the Commission finds that it would not be a violation of subsection 6B-2-5(c)(1) of the Ethics Act for the United Way's West Virginia State Employees' Coordinated Campaign to be implemented, as it has in past years, in the manner which consists of a voluntary payroll deduction program, for a charitable purpose, with no direct pecuniary benefits being received by the solicitors.

The Commission also notes that State employees of West Virginia University may participate in the WVSECC provided they follow the established guidelines governing all other State employees.

It is not necessary for the Chair of the WVSECC to submit a request to the Ethics Commission for an advisory opinion each year. The Public official may rely on this opinion for all future West Virginia State Employee Contribution Campaigns, however it is limited to the Campaign as described herein. Any variation in the structure of the campaign or the implementation of additional fund-raising projects should be evaluated by the Commission or its staff on a case-by-case basis.

  
Chairman