

COPY

ADVISORY OPINION NO. 95-34 - Revised

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON NOVEMBER 2, 1995

GOVERNMENTAL BODY SEEKING OPINION

An Attorney on behalf of a Public Official

OPINION SOUGHT

1. Is it a violation of the Ethics Act for a Public Official and his subordinates to solicit campaign contributions on behalf of candidates for public office?
2. Is it a violation of the Ethics Act for a Public Official to use office space, stationery, phones and other items provided to him for use in the performance of his official responsibilities, including his public title, to solicit campaign contributions on behalf of candidates for public office?
3. Is it a violation of the Ethics Act for a Public Official to use official stationery, office equipment and other items, including his public title, to publicly endorse or support a candidate for public office or sponsor receptions to meet the candidate and advocate publicly the candidate's views?

FACTS RELIED UPON BY THE COMMISSION

The public official would like to solicit campaign contributions for a specific candidate in the upcoming election. His intent is to support a candidate who he feels will continue, and improve upon, the programs of the administration and who will promote and enhance the public policy goals which have been established and implemented.

He would also like to publicly endorse this candidate's views and sponsor receptions to allow interested persons to meet the candidate. He would use his official title when participating in these various events.

The requester inquires as to whether he may use public resources such as office space, official stationery, office equipment, phones and other public resources to conduct these activities. These items were provided to him for use in the performance of his official public responsibilities.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-1-3(k) provides, in pertinent part "Thing of Value", "other thing of value", or "anything of value" means... (ix) donation or gift... or (xiii) every other thing or item, whether tangible or intangible having economic worth. "Thing of value", "other thing of value" or "anything of value" shall not include anything which is de minimis in nature nor a lawful political contribution reported as required by law.

West Virginia Code §6B-2-5(b)(1) states 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.

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: **Provided, however**, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution...

ADVISORY OPINION

1. Solicitation of Campaign Contributions. WV Code §6B-2-5(c)(1) provides that public servants may only solicit gifts for a charitable purpose which provides no direct financial benefit to them or the members of their immediate families. Before deciding whether this provision applies to the questions posed, the Commission must first determine whether a campaign contribution is a "gift" as that term is used in WV Code §6B-2-5(c)(1).

The term "gift" is not explicitly defined in the Ethics Act. However, at WV Code 6B-1-3(k) "gift" is included as part of the definition of the terms "[t]hing of value", "other thing of value", and "anything of value." This provision concludes with the statement that the definition of those terms "shall not include...a lawful political contribution reported as required by law."

The donations of, accounting for, and spending of campaign contributions, as well as the political activities of public servants are all regulated by the Legislature in detail elsewhere in the West Virginia Code. (See WV Code 3-8-1 et seq. and WV Code 29-6-20) This fact, along with the exclusion of political contributions from the Ethics Act definition of a "thing of value", leads the Commission to conclude that it was not the intent of the Legislature to regulate or limit the solicitation of political campaign contributions in WV Code 6B-2-5(c).

Therefore it would not be a violation of the Ethics Act for the public official to solicit campaign contributions for a candidate other than himself. The same would be true for solicitations by his subordinates.

2. Use of Public Resources to Solicit Campaign Contributions. The Ethics Act, at WV Code 6B-2-5(b)(1), prohibits public servants from using their office or the prestige of their office for their own private gain or the private gain of another. Although the Ethics Act does not prohibit public servants from soliciting campaign contributions for candidates they support; this provision of the Act does prohibit the use or expenditure of any public resources in such an endeavor.

The office space, stationery, phones and other items provided to public servants for use in the performance of their official, public responsibilities may not be used to subsidize what is essentially a private effort, i.e. raising funds for a political campaign.

Therefore it would be a violation of the Act's prohibition against use of office for the private gain of another for the requester to use the office space, stationery, phones and other items provided for use in the performance of his official, public responsibilities to solicit campaign contributions for himself or another candidate.

However, this prohibition does not extend to the use of official title or personal letterhead that is printed and purchased with private funds for such activities.

3. Use of Public Resources to Endorse. The Public Official asks whether he may use public resources at his disposal, such as office space, stationery, phones, labor and other items, to endorse the public views and candidacy of a candidate for public office.

As noted above, WV Code 6B-2-5(b)(1) provides that public servants may not use their public offices or the prestige of their offices for their own private gain or that of another person. Further, the Commission's legislative rules on private gain expressly prohibit the use of public time, equipment, materials and resources for private activities. (See 158 CSR 6-5.2 and 6-8) Although the public official would derive no private gain, clearly the candidate would receive private gain from the use of public resources to advance his or her candidacy.

Therefore it would be a violation of the Ethics Act for the public official to use public resources provided to him for use in performing his official duties in connection with his endorsement of a candidate for public office.

While a significant use of public resources to endorse a candidate would be a violation of the Ethics Act, the use of secretarial assistance, letterhead stationery and office equipment to produce an occasional letter of endorsement would not be. Such limited use of resources is de minimis, and is not a material violation. The use of official letterhead stationery for an endorsement, like the use of a public official's public title, is not a violation in and of itself.

Use of Public Title to Endorse. In regard to the use of the official's public title to endorse a candidate and the candidate's views, the Act specifically provides that 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 a prohibited use of office for private gain.

Incumbent public officials have a legitimate interest in attempting to safeguard and perpetuate public policies and programs they have worked to establish or maintain. Endorsing candidates for office who share that goal can be considered a part of the First Amendment rights of an officeholder. In addition, although the official endorsement of an incumbent public official may have substantial "political" value, such an endorsement does not create the type of private gain contemplated by the Act's prohibition against the use of office for private gain.

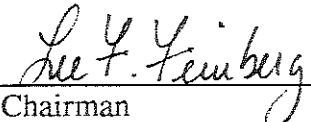
Therefore it would not be a violation of the Ethics Act for the public official to use his public title in an endorsement of a candidate for public office or the candidate's positions on public issues.

Sponsoring Receptions & Public Advocacy. The public official asks whether he may sponsor receptions to allow interested individuals to meet the candidate and advocate publicly the candidate's views.

It would not be a violation for the public official to sponsor, or use his public title in connection with sponsoring, a reception for a political candidate, provided no public monies or resources are used for the reception.

The Commission notes that this opinion is limited to an analysis of whether the Ethics Act alone would be violated by the requester's proposed conduct. This Commission is without authority to determine that conduct, acceptable under the Ethics Act, is therefore not prohibited by some other provision of the West Virginia Code. A finding by this Commission that specific conduct is not a violation of the Ethics Act does **not** grant immunity from other sanctions that may exist under the election laws or any other statute in the West Virginia Code.

Therefore, the requester is cautioned to be mindful of all requirements regarding political activities by public servants and the funding of campaigns found elsewhere in the Code.


Chairman