

**ADVISORY OPINION NO. 95-27**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON JUNE 1, 1995**

**GOVERNMENTAL BODY SEEKING OPINION**

A State Official

**OPINION SOUGHT**

Is it a violation of the Ethics Act for a state official or employee to solicit private contributions toward the cost of completing an aerial photography survey of the State?

**FACTS RELIED UPON BY THE COMMISSION**

West Virginia has been approached by the United States Geological Survey (USGS) about participating in the 1996 aerial photography program of the National Aerial Photography Program (NAPP). This is a program whereby the USGS updates its basic aerial photography for each of the 50 states every five years.

The photography is used by the USGS to update quadrangle maps and other mapping information maintained by the USGS. It is also used extensively by state and private sector agencies that require up-to-date aerial photography, and is essential for development of digital orthophoto products.

The project will involve taking approximately 4,840 photos of the entire state. These photos will be archived at the USGS mapping centers at Sioux Falls, SD and Salt Lake City, UT. Because of budget limitations, the USGS must share the cost of the photography with the participating states on a fifty-fifty basis.

The total cost of the NAPP photos for West Virginia would be \$216,000 for color infrared photography. Therefore, the State's share would be \$108,000.

The Legislature has appropriated \$2 million for the State's GIS effort this year but directed that most of it be used to develop a minerals GIS data base to aid in the tax assessment of mineral landholdings. The State is able to dedicate \$75,000 of these funds to the NAPP program, leaving a balance of \$33,000 to be obtained from other sources.

The requester proposes that he or another appropriate public employee be permitted to solicit private sector donations to act as matching funds to the state contribution. In return for its donation, a contributing corporation will be qualified to purchase the finished photographs at one-third the regular price.

Any solicitations received would be used solely to defray the costs of the aerial photography program and would not personally benefit any public servants.

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

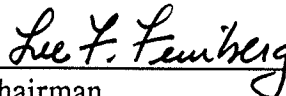
West Virginia Code Section 6B-2-5(c)(1) states in pertinent part that...a public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family...

**ADVISORY OPINION**

Pursuant to WV Code §6B-2-5(c)(1), a public official may not solicit any gift unless the solicitation is for a charitable purpose. The prospect of providing favorable treatment to contributors in the form of a discount, however, eliminates the charitable nature of this enterprise.

The Commission finds that the solicitation of contributions to the cost of the NAPP for West Virginia would be a "charitable purpose" as that term is used in WV Code §6B-2-5(c)(1) only if members of the public are able to have access to copies of the photos at the same price without regard to whether they made a contribution toward the project.

Therefore it would not be a violation of the Ethics Act for a public servant to solicit funds to assist in the USGS National Aerial Photography Program provided contributors are not given favorable treatment in obtaining access to the resulting photos and there is no other quid pro quo for making a contribution.

  
Chairman