

ADVISORY OPINION NO. 93-08

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON APRIL 1, 1993

GOVERNMENTAL BODY SEEKING OPINION

The Director of a City Department

OPINION SOUGHT

Is it a violation of the Ethics Act for City employees to solicit donations to assist in the funding of recreational and community programs which benefit the youth of the community?

FACTS RELIED UPON BY THE COMMISSION

The City Department is responsible for administering a number of recreational and community programs which are geared toward the youth of the community. The Department actively seeks the participation of private citizens and area businesses as an integral part of these programs.

For example, the City Department conducts several summer camps and clinics for specific activities such as football, baseball and tennis. These camps last from one to three days and attract hundreds of area youth. The camp or clinic director asks local businesses to donate items such as hot dogs, drinks, or other snacks, in order to help keep the activity fee affordable for low income youth. These donations generally range from \$10 to \$50 dollars and are voluntary. No services are provided in exchange for the donations.

Further, a city employee may also solicit funds to help defray the cost of special events for disadvantaged youth. Specifically, a business might be asked to purchase tickets to a special event such as a basketball game, the Ice Capades or a show and then donate those tickets to the city's youth center program.

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...No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:

- (A) Is doing or seeking to do business of any kind with his or her agency;

(B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his official duties.

ADVISORY OPINION

Solicitation

Pursuant to WV Code §6B-2-5(c)(1) public officials or employees may not solicit any gift unless the solicitation is for a charitable purpose. The programs administered by the City Department are geared toward the youth of the community and the solicitation for donations to fund these projects is intended to primarily benefit the lower income and disadvantaged youth of the area. For these reasons the Commission determines that these programs would be considered a "charitable" purpose as that term is used in the Ethics Act.

Therefore, it would not be a violation of the WV Code §6B-2-5(c)(1) for city officials or employees to solicit donations to assist in the funding of the two specific programs outlined in the request letter. The Commission notes that this opinion is limited to instances where the solicitation is for the benefit of lower income, disadvantaged youth. It may not be relied upon to justify solicitations for other City programs.

In all instances of solicitation, however, care should be taken that no gift is solicited or accepted under facts or circumstances which are improper or give the appearance of impropriety or the creation of a quid pro quo.

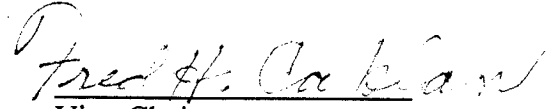
Acceptance

Pursuant to WV Code §6B-2-5(c)(1) public officials and public employees may not accept gifts from lobbyists, vendors, persons who are regulated by their governmental agency, or any person who has a financial interest in how the public officials or employees perform their public duties.

However, this subsection prohibits individual public officials and employees from personally accepting gifts. In the situations posed by the requestor the donations would not be used for any specific public servant's personal benefit but rather for programs inuring to the benefit of the public in general and disadvantaged youth in particular.

Therefore, it would not be a violation of the Ethics Act for a city official or employee to accept donations on behalf of the City Department when such donations are used to fund the programs outlined in the request.

In reaching this decision the Commission recognizes that some city officials or employees may have children who participate in these programs. However, the Commission finds any personal benefit resulting from the solicitation and acceptance of monetary donations to fund such projects is likely to be incidental and of a de minimis nature.


Fred H. Cobian
Vice Chairman