

ADVISORY OPINION NO. 93-10

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

APRIL 1, 1993

GOVERNMENTAL BODY SEEKING OPINION

A Public Official

OPINION SOUGHT

Is it a violation of the Ethics Act for a governmental entity to solicit donations of executive time from private businesses to allow executives to serve on a governmental task force conducting a management review of a state department?

FACTS RELIED UPON BY THE COMMISSION

A governmental entity would like to establish a task force of private citizens who will spend up to three (3) months studying a state department. The purpose of the task force will be to bring efficiencies to the management of that department.

The chief executive officers of thirty-five companies which conduct business in West Virginia will be asked to volunteer, for this three-month period, a specialist manager to participate in the task force effort. Each of the specialist managers would serve on the task force at no cost to the state.

Participation by companies will be strictly voluntary. The companies will be told explicitly that their part in the task force will not affect their present or future vendor relationships with the state.

Although the task force will study the workings of the state department and will make recommendations, the final judgements and recommendations will be made by the Secretary of the state department.

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...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

Pursuant to WV Code §6B-2-5(c)(1) public officials or employees may not solicit any gift except for a charitable purpose. Under the facts of this case there is clearly a form of solicitation since public servants initiate the contact with potential donors.


The governmental entity would be soliciting area companies for voluntary donations of executive time. The loaned executives would assist in a management review of a state department to improve that department's management practices.

The Commission has determined that seeking members to serve on an advisory task force would not be considered the type of solicitation restricted by the Ethics Act. Governmental agencies must have the ability to solicit the advice and input of a variety of interest groups when formulating public policy.

Therefore, it would not be a violation of the Ethics Act for the requestor to solicit donations of executive time allowing such executives to serve on an advisory task force which will conduct a management review of a state department.

In all instances, care should be taken that the executives' time is not solicited or accepted under circumstances which are improper or give the appearance of impropriety or the creation of a quid pro quo.

This opinion is limited to the facts presented and should not be relied upon by any other public official or employee.


Fred G. Tabors
Vice Chairman