

ADVISORY OPINION NO. 93-11

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 3, 1993

GOVERNMENTAL BODY SEEKING OPINION

Members of a County Board of Education

OPINION SOUGHT

Is it a violation of the Ethics Act for members of a County Board of Education to accept monetary contributions for a defense fund?

FACTS RELIED UPON BY THE COMMISSION

A petition for removal has been filed against three members of a County Board of Education. Some area residents would like to contribute to a defense fund which was created to assist these members in opposing this petition. The requestors plan to keep the identity of all contributors and the amount of the donations confidential.

The contributions would be used to defray the expenses incurred for attorneys' fees and costs. Should the defendants ultimately prevail in the dispute and are able to recover these expenses, the donations would be refunded.

The contributions will not be solicited by the public officials. The requestors have stated that they would not accept donations from lobbyists, vendors, individuals who are regulated or controlled by the Board, or people who have a financial interest which may be substantially affected by the actions of the Board members.

This County has not passed an excess levy program to assist in the funding of public education.

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...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 except for a charitable purpose. The Commission does not consider a defense fund established to defray the expenses incurred by public officials opposing a petition for removal to be a charitable purpose.

Although the requestors have stated that the funds will not be solicited by public officials or employees, the Commission determined in Advisory Opinion #92-37 that public servants may not, through private associations, perform tasks or render services that the Ethics Act prohibits those people from performing individually. Such use of surrogates to perform tasks that the Act otherwise prohibits would be improper.

Therefore, it would be a violation of the Ethics Act for the requestors, or private individuals acting on their behalf, to solicit contributions to a defense fund since such fund would not be considered a charitable purpose.

As a practical matter this will eliminate most contributions since the requestors may neither solicit personally nor ask other individuals to solicit contributions. Furthermore, citizens may not, on their own initiative, solicit on behalf of the requestors.

Acceptance

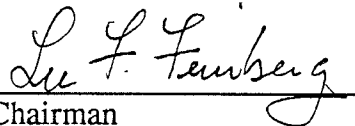
Pursuant to WV Code §6B-2-5(c)(1) public officials and public employees may not accept gifts, directly or indirectly, from lobbyists, vendors, persons who are regulated by their governmental agency, or any person who has a financial interest in how the public officials or employees perform their public duties unless the gift falls within certain exceptions. The Commission considers a monetary donation from individuals to a fund created for the use and benefit of the County Board of Education members to be an "indirect" gift to the public official, regardless of whether the public officials are unaware of the identity of any person making a monetary contribution. Only a voluntary donation of \$25 or less would fall within the permissible exceptions.

However, the requestors have stated that they will not accept donations from individuals in the prohibited classes outlined above and are willing to require that all contributors sign a statement asserting that they do not fall within any of these categories.

Therefore, it would not be a violation of WV Code §6B-2-5(c)(1) for the County Board of Education members to accept **unsolicited** monetary donations or other voluntarily contributions from individuals who do not fall within the categories of prohibited gift givers.

The requestors' assurance that the list of contributors will be kept confidential is not recommended since this would prevent the public from scrutinizing the list and verifying that contributions were not accepted from individuals falling within the prohibited categories or alternatively, that such individuals donated only \$25 or less.

Finally, the Commission notes that in all instances of acceptance care should be taken that no gift is accepted under facts or circumstances which are improper or give the appearance of impropriety or the creation of a quid pro quo.


Chairman