

ADVISORY OPINION NO. 93-22

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 3, 1993

GOVERNMENTAL BODY SEEKING OPINION

Prosecuting Attorney

OPINION SOUGHT

Is it a violation of the Ethics Act for a Prosecuting Attorney to solicit contributions for the purchase of a polygraph machine and the training of an operator for the polygraph?

FACTS RELIED UPON BY THE COMMISSION

A Prosecuting Attorney would like to contact various banks, insurance companies, and other businesses in the county to solicit donations to fund the purchase of polygraph equipment and then train an individual to operate it.

Currently, in order to administer a polygraph examination in this county the Prosecutor's office must contact an operator from another jurisdiction and arrange for the operator's travel to administer the test.

The requestor anticipates that the equipment and operator, if obtained, would be available for use by both the County and the City that serves as the county seat.

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: **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.

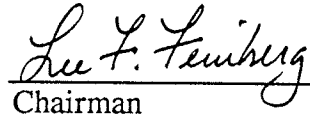
ADVISORY OPINION

Pursuant to WV Code §6B-2-5(c)(1) public servants may not solicit any gift, except for a charitable purpose. In Advisory Opinion No. 90-176 the Commission determined that the solicitation of contributions to fund required training for deputies in a Sheriff's office would not be considered solicitation for a charitable purpose. Similarly, in Advisory Opinion No. 92-06 the Commission determined that solicitation of funds to provide funding for the purchase a dog for use by the Sheriff's office drug unit was not a solicitation for a charitable purpose.

For the same reasons which guided the Commission's rulings in the Advisory Opinions cited above, the purchase of polygraph equipment and the training of an operator for such equipment, while a legitimate need, does not constitute a charitable purpose.

Further, the Commission has previously determined that public servants may not, through private associations, perform tasks or render services that the Ethics Act prohibits those public servants 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 Prosecuting Attorney, or anyone acting on behalf of the Prosecutor, to solicit donations for such purchases.

The conclusion reached in this Advisory Opinion renders moot the issue of whether the Prosecutor could use official office letterhead for such solicitations.


Chairman