

**ADVISORY OPINION NO. 93-30**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON AUGUST 5, 1993**

**PUBLIC EMPLOYEE SEEKING OPINION**

A County School Superintendent

**OPINION SOUGHT**

Is it a violation of the Ethics Act for a County School Superintendent or School Board Members to either solicit funds to finance the construction of a multipurpose athletic facility or develop a committee of private citizens to conduct such solicitations?

**FACTS RELIED UPON BY THE COMMISSION**

Although a new high school will open in the near future, the County School Board lacks the funds to construct a multi-purpose athletic facility adjacent to this new school. The requestors would like to solicit funds or develop a committee of private citizens who would solicit funds to construct this facility and purchase land adjacent to the new high school for its location.

**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.

**ADVISORY OPINION**

**Solicitation of Gifts**

Pursuant to WV Code §6B-2-5(c)(1), a public official may not solicit any gift unless it meets the following three criteria:

- a. the solicitation is for a charitable purpose;
- b. there is no direct pecuniary benefit conferred upon the solicitor or a member of his immediate family; and,

c. there is no solicitation of subordinate employees.

The type of solicitation contemplated in the request pertains to private community support for the construction of a multi-purpose athletic facility adjacent to a new high school. The construction of such a facility close to the school would enable the Board to provide better educational opportunities to the students. The Commission considers this project to be "charitable" in nature as that term is used in the Ethics Act.

Further, in this instance, contributions to the project would not be used for any specific public servant's personal benefit but rather would inure to the benefit of the school system. All contributions would be received on behalf of and for the use of the County School system.

Therefore, it would not be a violation of WV Code §6B-2-5(c)(1) of the Ethics Act for a County School Superintendent or School Board Members to either solicit funds to finance the construction of a multipurpose athletic facility or develop a committee of private citizens to conduct such solicitations.

The Commission reminds the requestors that the Ethics Act prohibits the solicitation of subordinate employees even if such solicitation is for a charitable purpose. Therefore, teachers, school service personnel, and other employees of the school system should not be solicited by the requestors.

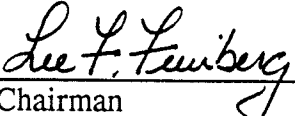
#### Acceptance of Gifts

West Virginia Code §6B-2-5(c)(1) prohibits a public servant from accepting gifts from lobbyists, vendors, persons who are regulated by their governmental agency, or any person who has a financial interest in how the public servant performs his official duties.

This subsection prohibits individual public officials and employees from **personally** accepting gifts. As previously noted, contributions to the project would not be used for any specific public servant's personal benefit but rather would inure to the benefit of the school system. All contributions would be received on behalf of, and for the use of, the County School system.

Therefore, it would not be a violation of WV Code §6B-2-5(c)(1) of the Ethics Act for requestors to accept contributions to support the construction of a multi-purpose athletic facility.

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.

  
Chairman