

ADVISORY OPINION NO. 92-04

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 5, 1992

GOVERNMENTAL BODY SEEKING OPINION

The Commissioner of a State Division

OPINION SOUGHT

Is it a violation of the Ethics Act for a State Division to solicit state chartered banking institutions to join as members of the Division's national professional Association?

FACTS RELIED UPON BY THE COMMISSION

A State Division has recently been asked to assist its national professional Association in a campaign to solicit state chartered banking institutions to join the Association as nonvoting members. These banking institutions are regulated by this State Division.

The Association serves as an advocate for the dual banking system and state banking departments. Services provided to members include weekly newsletters, technical assistance training courses and seminars for department personnel, research and commentary on issues relevant to the dual banking system and state banking departments, and lobbying efforts in Washington, D.C. on behalf of its voting membership.

The intent of the Association is to assure the ability of each state banking authority to provide safe, sound and well regulated financial institutions to meet the financial needs of local economies and their citizens.

Under the proposal, state chartered banking institutions would be solicited to join as non-voting members and would receive the services outlined above. The banking institutions joining would pay annual membership dues based on a sliding scale determined by the amount of assets held.

The national Association requested that the State Division assist the membership drive in one of two ways. The first option calls for the Association to provide all membership drive materials to the State Division which would then distribute the materials, including a letter from the State Division Commissioner, to all state chartered banking institutions. The institutions wishing to

join would return their completed membership materials, along with the annual membership dues, back to the State Division. The State Division would then collect and forward the dues to the Association.

The second option is identical to the first except that membership dues would be sent directly to the Association by the state banking institutions.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(b)(1) states in pertinent part that...a public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

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...

ADVISORY OPINION

Gift

Pursuant to WV Code §6B-2-5(c)(1) a public official or employee may not solicit any gift except for a charitable purpose. Since "gift" is not defined in the Ethics Act, its ordinary meaning or definition must be used. A gift is generally defined as something that is bestowed voluntarily and gratuitously without compensation in return. In this instance the State Division would merely solicit state chartered banking institutions for membership in a national Association. In exchange for payment of annual membership dues, the state banking institutions will be afforded access to a variety of services and informational resources which relate to the regulation of the banking industry. Therefore, the payment of membership dues would not be a "gift" within the meaning of the Ethics Act since the state banking institutions would receive materials and services in exchange for the dues paid. Based on the sliding scale of dues for voting members, all state banking institutions would pay a lesser amount than the State Division pays for its membership benefits.

Furthermore, there is no direct pecuniary benefit to any employee or official in the State Division resulting from the solicitation.

Consequently, it would not be a violation of WV Code §6B-2-5(c)(1) for a State Division to solicit state banking institutions to join as members of a national professional Association since the Ethics Act prohibits only the solicitation of non-charitable gifts. In this instance there is no gift because banking institutions would receive valuable services in exchange for their dues payments if they choose to join.

Private Gain

Pursuant to WV Code §6B-2-5(b)(1) it is a violation of the Ethics Act for public officials or public employees to use their office or the prestige of their office for the private gain of another. Under the facts of this case the employees of the State Division will use the Division's public resources such as postage, letterhead, photocopying and labor in an effort to expand the membership of the Association. Although no personal gain or benefit will accrue to any division employee as a result of these activities, the Association will gain financially. Since the Association is a private rather than public entity, there will be a resulting private gain which is prohibited by WV Code §6B-2-5(b)(1). Therefore, it would be a violation of the Ethics Act for Division personnel to use Divisional resources to solicit increases in the Association's membership.

The Commission would also note that it would be a violation of the Ethics Act for the public officials or employees in the State Division to use their position to exert undue pressure or influence on any state chartered banking institutions which are regulated by the State Division in order to obtain or increase memberships for the national Association.


Vice Chairman