

ADVISORY OPINION NO. #92-06

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON APRIL 2, 1992

GOVERNMENTAL BODY SEEKING OPINION

A County Commission

OPINION SOUGHT

Is it a violation of the Ethics Act for county officials and employees to solicit contributions to defray the costs of building an animal shelter and purchasing a dog for use in the sheriff's drug unit?

FACTS RELIED UPON BY THE COMMISSION

Certain elected county officials and county employees would like to solicit contributions from area banks and local businessmen to defray the cost of constructing a new county animal shelter and to assist the sheriff's department in the purchase of a dog for use in the sheriff's drug unit.

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.

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.

ADVISORY OPINION

Solicitation

a. Animal Shelter

Pursuant to WV Code §6B-2-5(c)(1) public officials and public employees may not solicit any gift, except for a charitable purpose. The Commission considers the establishment and funding of a humane animal shelter to be a charitable purpose. Therefore, it would not be a violation of WV Code §6B-2-5(c)(1) for county officials and county employees to solicit area banks and local businessmen for contributions to help defray the cost of constructing and maintaining a new county humane animal shelter.

b. Purchase of a Dog for the Sheriff's Drug Unit

As noted above, public officials and public employees may not solicit any gift except for a charitable purpose. The Commission determined in Advisory Opinion #90-176 that the solicitation of contributions to fund training for deputies in a Sheriff's office would not be a charitable purpose. Similarly, the Commission does not consider the purchase of a dog for use in the county sheriff's drug unit to be a charitable purpose.

Consequently, the county officials and employees may not **solicit** monetary contributions from area businesses to help defray the cost of purchasing such a dog for the sheriff's department.

Acceptance

Pursuant to WV Code §6B-2-5(c)(1) public officials and public employees may not accept any gift from persons who are seeking to conduct business with their governmental agency, persons who are regulated by their governmental agency, or any person who has a financial interest in how they perform their public duties.

However, one issue of this subsection prohibits individual public officials and employees from **personally** accepting gifts. In this instance the requestor has stated that the donations from area businessmen would not be used for any specific public servant's personal benefit but for the county animal shelter and the county sheriff's office as governmental entities. The Commission determined in Advisory Opinion #90-176 that governmental agencies may accept gifts as **an entity** if the acceptance of such gifts inures to the benefit of the public generally or is in furtherance of the operation of the office.

Care should be taken that no gift should be solicited or accepted under facts or circumstances which are or give the appearance of impropriety or the creation of a quid pro quo.

West Virginia Code §6B-2-5(c) regulates the solicitation and acceptance of gifts by **individual** public officials and employees but does not include governmental entities in its general prohibitions. Further, the Commission considers a gift used to defray the cost and expenses of specific governmental needs to be acceptable. Therefore, it would not be a violation of subsection 6B-2-5(c) of the Ethics Act for county officials or employees to accept voluntary monetary contributions intended to defray the cost of constructing and maintaining a county animal shelter or for providing the county sheriff's department with a dog to be used in the department's drug unit.

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


Chairman