

ADVISORY OPINION NO. 92-37

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON SEPTEMBER 3, 1992

GOVERNMENTAL BODY SEEKING OPINION

President of an Association

OPINION SOUGHT

Is it a violation of the Ethics Act for an Association to solicit private individuals for donations to fund the purchase of bullet proof vests for law enforcement officers throughout the State?

FACTS RELIED UPON BY THE COMMISSION

The requestor is the president of an Association which is comprised of public officials and employees. The Association would like to create a program designed to raise funds to purchase bullet proof vests for all law enforcement officers in the State.

Since the objective of the bullet proof vest is to shield and thereby protect the life of police officers, it is vital that each vest be constructed to the precise measurements of each individual officer. Therefore, the vest will be given to the individual law enforcement officer and not to the officer's employing governmental agency.

The project will be financed with private donations since smaller towns and counties do not have sufficient resources to provide such vests to the officers. The Association has contracted with a private firm to conduct solicitations to fund this project. Also, private corporations are conducting solicitations at no charge to the Association.

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...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

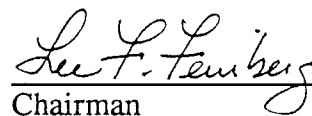
Although the Association is not covered by the Ethics Act and intends to contract with a private company to perform the solicitation, the members of such Association are public officials and public employees. The Commission determines that public servants may not contract with private individuals or companies to perform tasks or render services that the Ethics Act prohibits those public servants from performing themselves. Such use of surrogates to perform tasks that the Act otherwise prevents would be improper.

However, pursuant to WV Code §6B-2-5(c)(1) a public official or employee may solicit gifts for a charitable purpose. The purchase of bullet proof vests has the potential to save the lives of law enforcement officers throughout the State. The Commission determines that under these circumstances the purchase of such vests is a "charitable" purpose.

Therefore, it would not be a violation of WV Code 6B-2-5(c)(1) for an Association comprised of public officials and public employees, or a private company representing such Association, to solicit private individuals for donations to fund the purchase of bullet proof vests for law enforcement officers throughout the State.

Acceptance

The Act prohibits individual public servants from accepting gifts from lobbyists, vendors, persons who are regulated by their governmental agency or persons with a financial interest in how they perform their public duties. In this case, however, any gifts will be made to an Association for a charitable purpose. The vests will in turn be given by the Association to a particular governmental entity and not to a specific individual public servant. Furthermore, since any gift is ultimately given to the governmental entity, no individual law enforcement officer may take the vest upon leaving public employment. The vest must remain with the law enforcement agency.


Chairman