

ADVISORY OPINION NO. 91-13

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 7, 1991

GOVERNMENTAL BODY SEEKING OPINION

A County Prosecuting Attorney

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a County Prosecuting Attorney to accept monetary contributions from citizens of the County to help defray personal expenses?

FACTS RELIED UPON BY THE COMMISSION

The County Prosecuting Attorney has experienced personal financial problems. This official teaches a Sunday School class and the class president has sought to set up a fund to raise money to help the official defray some of the personal expense incurred.

The identity of all contributors is strictly confidential. The money raised to date has been placed into an interest bearing checking account and none of the monies has been removed pending the issuance of an opinion by the Ethics Commission.

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...may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official...No official...may knowingly accept any gift, directly or indirectly...from any person whom the official...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.

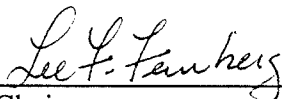
ADVISORY OPINION

The requestor states that a private citizen of the County has sought to create a fund to raise money to help the official defray the cost of the public official's personal expenses and that the Public Official will not solicit donations for this fund.

However, a public official may not **accept** any gift either directly or indirectly from persons who are engaged in activities which are or may be regulated or controlled by the official's public agency. The Commission has determined that the County Prosecuting Attorney does have the authority to regulate or control every citizen within his County.

The Commission considers a monetary donation from individuals to a fund created for the use and benefit of the County Prosecuting Attorney to be an "indirect" gift to the public official from the regulated individual, notwithstanding the fact that the Public Official may be unaware of the identity of any person making a monetary contribution.

Therefore, it would be a violation of the subsection 6B-2-5(c)(1) of the Ethics Act for the County Prosecuting Attorney to accept monies from a fund which was established by citizens in the County.



Chairman