

ADVISORY OPINION NO. 90-73

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON APRIL 20, 1990

GOVERNMENTAL BODY SEEKING OPINION

A State Delegate

OPINION SOUGHT

1. Whether it is a violation of the Act for a State Delegate to serve as the administrator of a non-profit organization and in that capacity solicit certain donations for the organization?
2. Whether it is a violation of the Act for a State Delegate to serve as an Ex-Officio member of a committee in conjunction with a State Department?

OTHER FACTS RELIED UPON BY THE COMMISSION

Non-profit Organization

The Delegate is the administrator of a non-profit organization which is a free primary care clinic serving individuals whose income is below the poverty level and do not have public or private insurance. The clinic is strongly supported by the community including, but not limited to: physicians, nurses, pharmacists, hospitals, drug manufacturers' representatives and medical supply companies.

As the administrator of the non-profit, tax exempt organization the State Delegate is required to solicit financial donations, volunteer support and supplies/medications. The requestor is also required to write funding applications to the State, a City, Foundations, churches and the United Way.

The State Delegate's salary is fixed by the Board of Directors of the non-profit clinic, and the requestor does not solicit donations as an elected public official. When the Legislature is in session and during interims, the requestor is required to take a leave of absence from the clinic and does not receive a salary during this period.

Committee Member

The requestor also serves as an ex-officio member of a medical committee of a State Department dealing with Medicaid patients. The Delegate was appointed to this position by the Administrator of the Department. She does not receive compensation or travel reimbursement as a Committee member. The committee determines which drug products are included on the medical program formulary.

The non-profit clinic where the Delegate acts as Administrator receives significant donations of drugs from pharmaceutical companies which the clinic dispenses, free of charge, to the patients they serve. The clinic does not treat Medicaid patients since they have public insurance. The Delegate solicits the donations outlined above as the Administrator of a free health clinic, and not as a public official.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-1-2(c) states in pertinent part that...the state government and its many public bodies and local governments have many part-time public officials and public employees serving in elected and appointed capacities; and that certain conflicts of interest are inherent in part-time service and do not, in every instance, disqualify a public official... from the responsibility of voting or deciding a matter; however, when such conflict becomes personal to a particular public official or public employee, such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

West Virginia Code Section 6B-2-5(b)(1) states 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

1. West Virginia Code subsection 6B-2-5(c)(1) permits the solicitation of gifts for a charitable purpose provided that the public official does not solicit a gift from any person who is also a public official or employee of the state and as such is the soliciting public official's subordinate. Also, there may not be any resulting direct pecuniary benefit conferred upon the official.

It is the Commission's opinion that solicitation of donations of financial support, volunteer support and supplies or medications on behalf of the clinic would be an implicit part of the Administrator's job and would not be considered a solicitation of a "gift" by a public official and therefore not in violation of subsection 6B-2-5(c)(1).

2. The Commission further finds it would not be a violation of subsection 6B-2-5(c)(1) of the Act for a State Delegate to serve as the administrator of a non-profit organization or serve as an Ex-Officio member of a committee in conjunction with a State Department and solicit certain items as long as the Delegate adheres to the guidelines outlined above.

Additionally, although there are no facts before the Commission to suggest this, the State Delegate should be mindful of subsection 6B-2-5(b)(1) of the Act which prohibits a public official from intentionally using the prestige of her office for her personal gain or that of another (for example, identifying herself as and using her position as a State Delegate to solicit clinic donations for the clinic or committee).

Although, it is not a conflict for a state legislator to solicit gifts as an administrator of a non-profit organization or to be an ex-officio member of such Committee the Delegate should be mindful of subsection 6B-1-2(c) and seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of deciding a particular matter when such matter becomes a conflict and when such conflict becomes personal.


Vice-Chairman