ADVISORY OPINION NO. 2013-46

Issued On November 7, 2013 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Municipality** asks whether its elected officials or employees may solicit donations of gift certificates from local restaurants to present as gifts to private citizen volunteers.

FACTS RELIED UPON BY THE COMMISSION

The Mayor would like to recognize private community volunteers and "good neighbors" with gift certificates from local restaurants and an introduction at a town council meeting. The Mayor, other city officials or employees would solicit area restaurants to donate gift certificates in the amount of $10.00-15.00. The Municipality asserts that the public recognition of those who engage in service to the community can be expected to help inspire other community members to join in these efforts.

CODE PROVISIONS AND LEGISLATIVE RULE RELIED UPON BY THE COMMISSION

W. Va. Code§ 6B-2-5(c) reads, in relevant part:

> (c) *Gifts.* -- (1) 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 is subordinate to the soliciting official or employee....

The Commission's Legislative Rule governing solicitation of charitable gifts, 158 W.Va.C.S.R. § 7.6, states, in relevant part:

> 6.1. Public officials and public employees may solicit gifts for a charitable purpose when there is no resulting direct pecuniary benefit to the public official or public employee or an immediate family member.
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> 6.2. The Ethics Commission may recognize programs or activities as involving a charitable purpose on a case-by-case basis.
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> 6.5. A reasonable amount of public resources may be used for a charitable solicitation or fund-raising drive that is conducted in furtherance

of the West Virginia State Employees' Coordinated Campaign or a fund raising campaign officially approved by either the executive, legislative or judicial branch of State Government or the governing body of any political subdivision.

* * *

6.7. State government agencies and the governing bodies of political subdivisions may solicit funds to support or underwrite agency programs which are statutorily created or authorized and are intended to help the poor and disadvantaged. If a state government agency or governing body of a political subdivision seeks to solicit funds for use by the agency for any other purpose, then the state government agency or governing body of a political subdivision must first seek permission from the Executive Director of the West Virginia Ethics Commission or the Ethics Commission through issuance of a formal Advisory Opinion. The Executive Director or Ethics Commission may only authorize such a solicitation if it serves a public purpose....

ADVISORY OPINION

The Ethics Commission explained, in Advisory Opinion 2012-49, as follows:

> The Ethics Act restricts public servants from soliciting funds for non-charitable purposes. One underlying purpose of this provision is to ensure that public servants do not solicit for their own benefit or that of another. Another underlying purpose is that public agencies should not solicit donations to cover their operational costs or to underwrite traditional governmental functions. An equally compelling concern is that potential donors should not feel compelled to donate or face unfavorable treatment, or be led to believe that by donating, they will receive preferential treatment by a government agency.

Therefore, public officials and public employees 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. W. Va. Code § 6B-2-5(c). Advisory Opinion 2012-49.

Although neither the statute nor its corresponding Legislative Rule cited above define "charitable purpose", the Ethics Commission, in Advisory Opinion 2005-02, held:

> As a general guideline, the Commission recognizes two main categories of programs or activities which constitute a charitable purpose: (1) Those which benefit the poor or disadvantaged; and, (2) Those which serve a public purpose or provide a significant public benefit."

The Commission explained in Advisory Opinion 2012-08:

> In seeking outside monetary assistance, however, public agencies raise the potential for a coercive solicitation. For this reason, the Commission established a case-by-case review of "charitable" solicitations and has been stringent in its holding that "the overriding purpose of the solicitation must be to provide a benefit to the public as opposed to defraying the internal administrative costs of the [Agency]. Advisory Opinion 2005-02.

The Commission found that solicitations for the purchase of a police canine and shotgun/rifle racks are not permissible under the Ethics Act as they do not constitute charitable gifts. Advisory Opinion 2012-08.

Conversely, in Advisory Opinion 2013-40, the Ethics Commission held that educating the children of West Virginia was indeed a significant public benefit. Likewise, in Advisory Opinions 2005-02, 2010-17 (non-precedential) and 2011-11, the Ethics Commission found that the overriding purposes of the solicitations were indeed to provide a benefit to the public. These purposes include: a public health program administered by a County Board of Health; public broadcasting throughout the state by an agency tasked with administering on-air broadcasting to offset its own operating costs; and, a recreational department for the homeless by an agency tasked with housing veterans.

Here, the Commission finds that recognizing volunteers in an effort to promote volunteerism, while laudable, does not provide an overriding public purpose sufficient to overcome the prohibition against soliciting the public. While volunteers provide valuable services to West Virginia communities, actively soliciting donations from local businesses to recognize them would violate W. Va. Code§ 6B-2-5(c).

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.,* and does not purport to interpret other laws or rules. In accordance with W. Va. Code§ 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other public agencies as hereinabove set forth unless and until it is amended or revoked, or the law is changed.

/s/ R. Kemp Morton, Chairman
Kemp Morton, Chairman