

ADVISORY OPINION NO. 96-36

Issued August 8, 1996 By The

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

Members of an Association of Public Servants

OPINION SOUGHT

Whether certain fund raising activities used to help finance Association activities are consistent with the provisions of the Ethics Act?

FACTS RELIED UPON BY THE COMMISSION

The Association is a nonprofit corporation "organized exclusively for charitable, religious, educational, and scientific purposes". Its membership is comprised primarily of state and county public servants.

The principal activities of the Association include an annual conference, semiannual regional meetings and the in-service training sessions held throughout the year by different sections of the Association.

The Association's activities are financed by its members' annual dues supplemented by donations and a variety of fund raising activities conducted by the Association and its several sections. Donations and proceeds from fund raising activities are used to help defray the cost of speakers, facilities, and training materials.

The Association relies heavily on the proceeds of raffles to support its activities. Some of the raffles are "50/50 raffles" with half of the raffle sale proceeds going to the winner(s) and half to the Association. Other raffles are for prizes which are either donated to or solicited by the Association. The Association also conducts sales of candy, pocket calendars, letter openers and various other items and holds bake sales and hot dog lunches.

In anticipation of the upcoming annual conference, solicitations were made by the Association for gifts to be given as door prizes and to be included in "goody bags" or "loot bags" for those attending the conference. The Association now understands that the solicitation of such items for distribution to its members was improper and seeks guidance on the appropriate manner of disposing of the items obtained to date [e.g. pens, special event tickets, etc.].

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(c)(1) provides 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: *Provided, however*, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. 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(c)(2) provides in pertinent part that...Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision...

- ...
- (C) Unsolicited gifts of nominal value or trivial items of informational value;...

ADVISORY OPINION

Is the Association bound by the provisions of the Ethics Act? Because it is comprised of public employees who are covered by the Ethics Act, the Association must conform to the ethical requirements of the Ethics Act. The Commission has previously determined that public servants may not, through a surrogate like a private association, engage in activities prohibited by the Ethics Act. Both the Association and its members are bound by the Act.

SOLICITATION OF GIFTS

The Ethics Act prohibits public servants from soliciting gifts, unless the solicitation is for a charitable purpose from which neither the solicitor nor his or her immediate family members benefit directly. Solicitation of gifts from subordinates is not permitted, even for a charitable purpose.

Consequently, the solicitation of gifts to support Association activities may be made only if such activity is considered a charitable purpose. Solicitation for the Association's noncharitable activities would be a violation of the Ethics Act.

Educational Programs

Is the Association considered charitable for solicitation purposes? The Association is authorized by its charter to engage in both "charitable" and "educational" activities. Solicitation of support for its "charitable" activities is clearly permitted. Solicitations for its educational activities which are provided to, or directly benefit, the poor or disadvantaged would constitute a "charitable" activity and would also be permitted.

However, the Association's conference, meetings and training sessions are primarily concerned with maintaining and enhancing the professional competence of its members. The Ethics Commission has ruled in similar cases, and rules here, that such educational activities provided by an association for its members are not a charitable purpose and do not fall within the exemption created by the Legislature.

Solicitation of equipment needed for the Association's educational program. The Commission has determined that the Association's conferences, meetings and training sessions would not be considered a charitable purpose. Therefore, it would be a violation to solicit the loan of equipment used in the presentation of such seminars.

Prizes

Solicitation of door prizes and goody bag items for distribution to those attending Association educational activities. Solicitations were made by the Association for gifts to be given as door prizes and to be included in "goody bags" or "loot bags" for those attending the conference. Clearly these solicitations are not for a charitable purpose from which the solicitors and their family members receive no direct benefit, and should not have been made. The items collected should either be returned to the donors or given to or used as a part of some clearly charitable activity.

Solicitation of prizes for raffles. It would be a violation to solicit prizes for a raffle, unless the proceeds of the raffle were devoted to a charitable purpose.

Charitable

Solicitation for scholarships. It appears that the Association might in the future wish to raise funds to create educational scholarships for "deserving" individuals. Solicitation of gifts to support scholarships for the poor or disadvantaged would be acceptable as solicitations for a charitable purpose. However, the Association should make an additional advisory opinion request before beginning solicitations for gifts to fund scholarships which may be awarded to its members or their families.

FUNDRAISING ACTIVITIES

Because the Association is not permitted to solicit gifts to support its program to educate its own members, the Commission must look in turn at each of the several fund raising activities of the Association to see if they constitute the solicitation of a gift. The Commission considers a gift to be something given voluntarily and without compensation - something given without consideration in return. A gift does not involve an exchange of value.

Conduct Raffles. If the sale of raffle tickets is a solicitation of a gift, then the Association may not sell tickets to fund its educational program. However, the Commission finds that the sale of raffle tickets, which offer a chance at a valuable prize, is not a solicitation of a gift. This is true, even if buyers may be motivated by a desire to benefit the sponsor, provided the raffle is legitimate and not a mere sham to disguise the solicitation of gifts. Therefore, it would not be a violation to sell raffle tickets to fund the Association's education and training activities.

Bake sales and hot dog lunches and sales of consumer goods. Like the sale of raffle tickets, the sale of food and other consumer goods provides the buyer value for the money paid and is not a solicitation of a gift. It would not be a violation for the Association to sponsor such sales to fund its education and training activities.

BENEFITS WHICH ARE NOT GIFTS

Acceptance of free conference room. A hotel offers the free use of a conference room to groups which sponsor a conference at the hotel and book a certain number of rooms for those attending a conference. The free use of the conference room is an element of a commercial transaction - a part of the conference package offered by the hotel. It is not a gift as that term is used in the Ethics Act and the use of the room by the Association would not be a violation of the Act.

ACCEPTANCE OF GIFTS

The Ethics Act prohibits public servants from accepting gifts, with several specific exemptions, from interested persons. Interested persons are (1) lobbyists, (2) those engaged in activities regulated or controlled by a public servant's agency, (3) those who sell or seek to sell to their agency, and (4) those with a financial interest in how the public servant does his or her job which sets them apart from the public generally. There is no restriction on accepting gifts from those who are not interested persons.

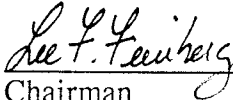
Distributing plastic advertising bags donated by a city chamber of commerce. The Ethics Act places no restrictions on the Association or its members accepting gifts from the city chamber of commerce, since it does not fit into one of the four categories designated as interested persons. It would not be a violation for the Association to accept and distribute the bags to those attending its conference or for its members individually to accept the bags.

GIFTS FROM INTERESTED PERSONS

The Legislature made provision for the acceptance of certain gifts, even from interested persons. Principal among gifts which are specifically exempted and may be accepted, even if they come from an interested person, are gifts of nominal value, which is a value of \$25 or less as established by the Commission's legislative rules. In addition, gifts made for a charitable purpose may be accepted and used for that purpose, regardless of their value.

Simply, it would not be a violation of the Ethics Act for the Association to accept unsolicited gifts of more than nominal value for one of its charitable activities. Further it could accept unsolicited gifts of nominal value for use in its educational program. However, it would be a violation for the Association to accept from an "interested person", gifts of more than nominal value for use by the Association for any noncharitable purpose.

Loan of equipment used in conference. As previously noted, the Association may not solicit area businesses for the loan of equipment to be used in the presentation of the Association's conferences, meetings and training sessions. However, it would not be a violation for the Association to accept an unsolicited offer of the free use of equipment necessary for its educational programs, if the value of the loan did not exceed \$25 [making it an acceptable gift of nominal value] or if the loan did not come from an interested person.



Chairman