ADVISORY OPINION NO. 2012-22

Issued On June 28, 2012 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

An **Executive Director of an Ambulance Authority** asks whether: (1) public resources, including personnel, may be used to promote the passage of a levy; (2) public resources, including personnel, may be used to educate the public about a levy; and, (3) the Authority may use an unsolicited gift of $1,000.00 to promote the levy.

FACTS RELIED UPON BY THE COMMISSION

The Requester is the Executive Director of an Ambulance Authority. The Ambulance Authority's sources of funding include: (1) levy money; (2) mine retainer money - this money is revenue generated by the Authority's contracts with coal companies to transport coal company employees injured on the job; and, (3) revenue generated from transporting patients.[1]

In November, the levy will be on the ballot for renewal. The Requester states that all money received from the levy is used to cover the salaries of its employees. As this amount is insufficient to cover all personnel expenditures, the remaining personnel expenditures are covered by the Authority's other revenue sources.

The Requester seeks guidance on using agency funds or personnel to promote the passage of the levy. The Requester also states that the Authority received donations totaling $1,000.00 from citizens in the community. The impetus for the donations was the death of a spouse of a board member. The surviving spouse/Board Member, asked friends and families, in lieu of sending flowers, to make donations to the Ambulance Authority. The Requester stated that surviving spouse/Board Member told the Ambulance Authority that the money may be used for any purpose, including support of the levy.

The Requester seeks guidance on using public funds, or the donated money, to promote the passage of the levy.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code§ 6B-2-5(b) reads:

[1] The Authority contracts with a private billing company to bill patients or their insurance companies for services rendered. The billing company charges a commission for this service and remits the remaining money collected to the Ambulance Authority.

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. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

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In establishing the Ethics Act, the Legislature sought to create a code of ethics to guide public officials and employees in their public employment. The expressed goal was to assist public servants in avoiding conflicts between their public service and any outside personal interests. W.Va. Code§ 6B-1-2(d).

The Commission has previously ruled in A.O. 2010-23 that public funds may not be used to promote the passage of a levy when the levy proceeds will be used for salaries. Here, it is the same situation insofar as the Requester states that the levy funds are used for salaries. As such, the Requester may **not** use public funds or staff to promote the passage of the levy. Still, the Commission takes this opportunity to provide more specific guidance to Ambulance Authorities and similarly situated public agencies in regard to what action they may take in relation to levy elections:

- The Executive Director or Board Members, or both, may speak out in favor of the levy at Board meetings and in other public forums.

- The Agency may use public funds to educate the public about the levy process, the nature of the services provided by the agency, and the purpose for which the levy funds will be used. The agency may not, in advertisements paid for with public funds, advocate for the passage of the levy. The advertisements may, however, state - "We urge you to vote on this issue" (or words to that effect).

- Neither the Executive Director nor Board Members may require nor pressure agency staff to support the levy. If staff members volunteer their time, they must perform their campaign activities on their own time, not during their public work hours. Additionally, they may not use public resources in furtherance of the campaign.

Next, the Authority asks whether the $1,000.00 donation may be used to campaign for the passage of the levy. The Commission finds that under the unique circumstances presented it may use the funds for this purpose, provided that the surviving spouse/Board Member confirms that she is agreeable to the money being used for this

purpose.

If the surviving spouse/Board Member authorizes the Requester to use money for this purpose, still caution must be exercised. For example, if the Authority uses this money to purchase campaign signs or advertising, this work should be done by the Executive Director, Board Members or volunteers, not agency staff. Moreover, no advertisements or campaign signs should state that the Authority is asking the electorate for their support of the levy; instead, campaign expenditures made with the $1,000.00 shall either avoid reference to the agency taking a position, or state that the request for support is being made by friends or supporters of the agency and the levy.

Additionally, the Commission cautions that normally an agency may not solicit for this purpose or have a Board Member solicit for this purpose, i.e. a request for donations to be given to the public agency to be used for a campaign to support a levy.[2] Nonetheless, the donations in question were given under unique circumstances, and so long as the Board Member in question is agreeable to the expenditure of funds for this purpose, the Commission finds it is permissible. The Requester shall send the West Virginia Ethics Commission written confirmation thereof.

If the Requester uses agency funds to educate the public about the levy, or uses the $1,000.00 to promote the levy, the Requester should also check with the Secretary of State's Office to ensure compliance with applicable campaign finance laws. Also, the Requester should consult with the West Virginia State Auditor's Office and the Office of the Attorney General to ensure that the expenditures do not run afoul of other laws governing the expenditure of public funds.

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 unless and until it is amended or revoked, or the law is changed.

/s/Jonathan E. Turak,
Jonathan E. Turak, Acting Chairperson

[2] W.Va. Code§ 6B-2-5(c) states that agencies may only solicit for charitable purposes. Agencies may not solicit for political purposes. In contrast, a public official may solicit campaign contributions for political action groups or other entities formed, in accordance with applicable State election laws, to support a candidate or levy.