

SOLICITATION POLICY

I. PURPOSE:

The purpose of the State of West Virginia Solicitation Policy (the “Policy”) is to establish the position of the Department of Administration, State of West Virginia as it relates to solicitations by and of state employees on property, including buildings and facilities, owned, operated or controlled on behalf of the State of West Virginia by the Department of Administration (“State Property”).

II. DISCUSSION:

It is in the best interests of all citizens of the State that guidelines be advanced for the regulation of solicitations involving state employees and state-owned property, including government buildings and facilities. As conservators of the public trust, the State is obligated to ensure that human and physical resources of state government are utilized in the most effective and cost-efficient manner possible. To that end, the State must ensure that internal operation of the business of the People is always conducted without undue interruption or interference, and there is no serious impediment to public access and to the free movement and safety of state employees or citizens in or on state-owned property in conducting such business. This Policy is created to balance the interests discussed herein with the citizens’ rights to freedom of speech and is formulated in order to further and promote the public good and welfare.

III. DEFINITIONS:

For purposes of this Policy, the following definitions shall apply:

- A. **Solicitor:** Means any person, company, vendor, corporation, business entity, non-profit organization, or for-profit organization (or combination thereof) which seeks to influence or secure the monetary patronage, contribution, or support of any person in his/her individual capacity.
- B. **Solicit or Solicitation(s):** Means the act of seeking to influence or secure the monetary patronage, contribution, or support of any person, in his/her individual capacity, through verbal means or the distribution of pamphlets, leaflets or other written materials. Solicit or Solicitation(s) also includes conducting “commercial speech” which hereby is defined as the proposal, either verbal or written, to any person, in his/her individual capacity, to enter into a commercial or business transaction.
- C. **Peaceable:** Means speech or activity that is not reasonably expected to incite violence or criminal acts of the listener(s) upon the speaker or any other person(s).

IV. POLICY:

- A. Solicitors are not permitted to Solicit state employees while state employees are engaged in the assigned duties of their positions in public areas designated as non-public forums for purposes of this Policy and include, but are not limited to, doorways, state employee offices, conference rooms, and meeting rooms of State Property, except as permitted by federal or state law.
- B. Solicitors may be permitted to conduct Solicitations within certain specifically identified areas of State Property (as defined below), and designated as limited public forums, only upon obtaining approval in advance from the General Services Division of Department of Administration (“GSD”). Such approval shall be limited, or confined, to the following specifically identified areas: Hallways, corridors, and stairways of the Capitol Building, including the East Wing and



West Wing; the internal rotunda area of the Main Capitol Building; and any reception, cafeteria, or lobby areas which have a public sitting or waiting area within State Property that have been held open by the Department of Administration, or a state spending unit leasing State Property, for such Solicitation activities.

- C. Solicitors are permitted to conduct Solicitations in areas which are designated as traditional public forums of State Property (as defined below), so long as such Solicitations are peaceable, lawful, and are not reasonably anticipated to pose a threat to the safety, health, and welfare of the citizens or employees of the State of West Virginia, and are approved in advance by GSD. Such approval shall be limited, or confined, to the following areas: Public sidewalks on State Property, public parking lots on State Property, and the grounds of the Capitol Complex.
- D. Approval Guidelines:
 - 1. The Department of Administration shall formulate fixed standards for granting approvals to Solicitors under this Policy for the use of State Property, which shall not be arbitrarily applied.
 - 2. Approvals under this Policy shall be issued by a committee or group of individuals (the "Committee), made up of the Secretary of the Department of Administration, or his/her designee; the Assistant General Counsel of the Department of Administration, or his/her designee; and the Director of GSD, or his/her designee and shall be made in writing through a Request to Use State Property form and Agreement as executed by the Solicitor(s) and Committee.
 - 3. Any restrictions or limitations imposed on such approvals, shall be made with reasonable, and equally applied, standards of time, place and manner.
 - 4. Under no circumstances, should approvals, restrictions, or limitations imposed on such approvals, be based on the content or subject matter of a Solicitor's speech.
- E. If Solicitors, even after obtaining approval, obstruct or seriously impede the free movement of persons or vehicles; conduct Solicitations that are not peaceable, lawful, and are reasonably anticipated to pose a threat to the safety, health, and welfare of the citizens or employees of the State of West Virginia; violate any other provision under this Policy; or violate any other state or federal law, the Department of Administration reserves the right to request the Solicitors to leave State Property and/or have the Solicitors escorted off State Property.

V. EXCEPTIONS:

If a potential Solicitor proposes to conduct Solicitations of "commercial speech" (as defined above) in or on any designated type or area of State Property, which are found to be misleading, deceptive or fraudulent as determined by the Committee, approval to perform such Solicitations shall not be granted. Any Solicitor conducting Solicitations of this nature will be immediately asked to leave State Property and/or will be escorted off State Property.

VI. EXCLUSIONS:

All persons, companies, vendors, corporations, business entities, non-profit organizations or for-profit organizations who currently conduct business or provide charitable services in conjunction with the State of West Virginia, provide commodities or services to the State of West Virginia, or any such entity who has been invited to State Property proposing to provide commodities or services to the State



of West Virginia are excluded from this Policy *when* such entities are on State Property operating in the scope of this business relationship.

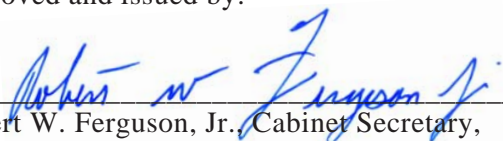
VII. REFERENCES:

- A. The First Amendment of the Constitution of the United States and W.Va. Const. Art. 3, §7.
- B. W.Va. Code § 5A-4-1 and § 5A-4-2.
- C. M.A.L. v. Kinsland, No. 07-1409, 2008 WL 4471097 (2008).
- D. State ex rel. Hechler v. Christian Action Network, 491 S.E.2d 618 (1997).
- E. State By and Through McGraw v. Imperial Marketing, 472 S.E.2d 792 (1996).
- F. Wheeling Park Commission v. Hotel and Restaurant Employees, International Union, AFL-CIO, 479 S.E.2d 876 (1996).
- G. West Virginia-Citizen Action Group v. Public Service Commission of West Virginia, 330 S.E.2d 849 (1985).
- H. West Virginia Citizens Action Group, Inc. v. Daley, 324 S.E.2d 713 (1984).
- I. United Mine Workers of America International Union v. Parsons, 305 S.E.2d 343 (1983).
- J. United States v. Kokinda, 497 U.S. 720 (1990).
- K. Secretary of State v. Joseph H. Munson Co., 467 U.S. 947 (1984).
- L. Perry Education Association v. Perry Local Educators' Association, 460 U.S. 37 (1983).
- M. Widmar v. Vincent, 454 U.S. 263 (1981).
- N. Edwards v. South Carolina, 372 U.S. 229 (1963).
- O. Schaumburg v. Citizens for a Better Environment, 444 U.S. 620 (1980).
- P. 60 W.Va. Op. Atty. Gen. 101, (1983)

VIII. EFFECTIVE DATE: December 29, 2008.

IX. POLICY NUMBER: DOA-P6.

Approved and issued by:



Robert W. Ferguson, Jr., Cabinet Secretary,
Department of Administration

Date: December 29, 2008.