

Advisory Opinion 2020-10

Issued on July 2, 2020, by

The West Virginia Ethics Commission

Opinion Sought

A **City Manager** asks whether a city police officer may accept an all-expense paid trip to an annual sales meeting of a private company that manufactures protective equipment for law enforcement professionals.

Facts Relied Upon By the Commission

A city police officer has been invited to a national sales meeting of a private company that manufactures protective solutions for military and law enforcement professionals. The invitation was extended to recognize the officer due to the officer having been previously shot in the line of duty while wearing an armored vest manufactured by the company.

The company's armored vests are the preferred type and brand for the city police department. All of the city's uniformed officers are outfitted with one of the company's vests; each vest is valued at \$740. Every year the city police department purchases the company's vests for new officers through a retailer. The company has visited the police department three times since 2018. Two visits were to replace a vest that had been shot with a new vest at no cost, and the third was to test the company's vests for various law enforcement agencies including the city police department.

The national sales meeting will take place at a Florida resort, and the company has offered to cover the cost of the flights, hotel, food and transportation to and from the airport for the officer and one guest. The itinerary also includes a reception, dinner cruise and tour of the company's facility.

Provisions Relied Upon By the Commission

W. Va. Code § 6B-2-5(b)(1) provides in relevant part:

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.

W. Va. Code § 6B-2-5(c)(1) provides in relevant part:

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 or her official duties.

W. Va. Code § 6B-2-5(c)(2) provides:

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, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

- (A) Meals and beverages;
- (B) Ceremonial gifts or awards which have insignificant monetary value;
- (C) Unsolicited gifts of nominal value or trivial items of informational value;
- (D) Reasonable expenses for food, travel, and lodging of the official or employee for a meeting at which the official or employee participates in a panel or has a speaking engagement;
- (E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural, or

political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;

(F) Gifts that are purely private and personal in nature; or

(G) Gifts from relatives by blood or marriage, or a member of the same household.

Advisory Opinion

In establishing the Ethics Act, the Legislature sought to maintain the public's confidence in the impartiality and independence of decisions and actions by public officials and employees, and to ensure that all such decisions be made free of undue influence, favoritism or threat at all levels of government. W. Va. Code § 6B-1-2(a).

In accordance with this purpose, a public employee may not accept, directly or indirectly, gifts from anyone who is doing or seeking to do business of any kind with his or her agency, is engaged in activities which are regulated or controlled by his or her agency or 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 or her official duties. W. Va. Code § 6B-2-5(c)(1).

Here, the city police department currently outfits all of its officers with an armored vest from the same company that has invited the officer to its national sales meeting. The company has also visited the city police department three times since 2018 to both replace vests that had been shot and to provide a demonstration of its vests' effectiveness to the department and other agencies. Given these facts, the Ethics Commission concludes that the company is "doing or seeking to do business of any kind" with the city officer's agency per W. Va. Code § 6B-2-5(c)(1).

The company wishes to cover all expenses, including flights, hotel, food and transportation to and from the airport, for the officer and one guest to attend its national sales meeting. The Commission finds that these items constitute gifts under the Act. See, e.g., Advisory Opinion 2010-11 (finding that complimentary airline tickets constitute gifts).

The Ethics Act provides specific exceptions to the gift limitations in the Act; however, no exception covers the all-expense paid trip here to the company's national sales meeting. W. Va. Code § 6B-2-5(c)(2)(A)-(G). Only two exceptions are relevant to the instant inquiry, the exception for meals and beverages and the exception for reasonable expenses for food, travel, and lodging for a meeting at which the employee participates in a panel or has a speaking engagement. W. Va. Code §§ 6B-2-5(c)(2)(A) & (D).

While W. Va. Code § 6B-2-5(c)(2)(A) permits the officer to accept meals and beverages from the company, it does not otherwise permit the acceptance of an all-expense paid trip. See Advisory Opinion 99-20 (finding that a ticket to listen to a prominent

journalist's presentation is not a gift of meals and beverages when lunch is also served at the presentation). Moreover, there are no facts to suggest that the officer is attending the national sales meeting to participate in a panel or speaking engagement that would come within W. Va. Code § 6B-2-5(c)(2)(D).

Given the foregoing, the Ethics Commission finds that the city police officer may not accept the costs associated with attending the company's national sales meeting as this would constitute a prohibited gift under the Ethics Act.

The Ethics Commission also wishes to make clear that its decision today does not foreclose the honoring of officers who put their lives on the line to serve and protect their communities. The Ethics Act, however, does prohibit public employees from accepting gifts from those entities who are doing or seeking to do business with their agencies.

The Ethics Commission both commends and thanks the officer for his dedication and incredible bravery in fulfilling his duty to protect and serve.

This Advisory Opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester must contact the Ethics Commission for further advice as it may alter the analysis and render this Opinion invalid. This Advisory Opinion is limited to questions arising under the Ethics Act, at W.Va. Code §§ 6B-1-1 through 6B-3-11, 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 public servants and other persons unless and until it is amended or revoked or the law is changed.


Robert J. Wolfe, Chairperson
WV Ethics Commission