

## **Advisory Opinion 2022-13**

**Issued on May 5, 2022, by**

**The West Virginia Ethics Commission**

### **Opinion Sought**

A **State Board's Executive Director** asks whether she and the Board's members must report on their Financial Disclosure Statements that a foundation is the source of a gift when the foundation reimburses their attendance and travel expenses to attend a conference hosted by the foundation.

### **Facts Relied Upon by the Commission**

The Executive Director and Board members of a State Board attend training conferences hosted by a non-profit foundation ("Foundation"). The Foundation reimburses the Requester and the Board members' attendance fees, lodging, meals, and other travel expenses for attending these conferences.

The State Board has authority over the licensure and certification procedures and requirements, including the development of examinations, for practitioners in a licensed profession. The Requester states that the training conferences assist her and the Board members in obtaining and enhancing skills and knowledge relating to the duties and mission of the State Board.

The United States Congress has authorized the Foundation to be the source for establishing the standards and qualifications related to the profession over which the State Board has oversight. The Foundation also provides guidance on recognized methods and techniques related to the profession. The Foundation has a qualifications board that annually updates and revises the national standards for education and experience required for the licensure and certification of these professionals.

No state regulatory agency pays dues to the Foundation. According to the Foundation's website, "[t]he Foundation is not a membership organization but rather is composed of other organizations. . . . [C]lose to one hundred organizations, corporations and government agencies are affiliated with the Foundation." The Foundation's advisory council consists of 60 non-profit organizations and government agencies, including a West Virginia professional organization whose profession is regulated by the State Board. Neither the Foundation nor the West Virginia professional organization has lobbyists registered in the State of West Virginia.

### **Provisions Relied Upon by the Commission**

W. Va. Code § 6B-1-3(h) states:

“Person” means an individual, corporation, business entity, labor union, association, firm, partnership, limited partnership, committee, club, or other organization or group of persons, irrespective of the denomination given such organization or group.

W. Va. Code § 6B-2-6(a) states, in relevant part:

The following persons must file the financial disclosure statement required by this section with the Ethics Commission:

. . . .

(2) All members of state boards, commissions and agencies appointed by the Governor; and

(3) Secretaries of departments, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads.

W. Va. Code § 6B-2-7(a) states, in relevant part:

The financial disclosure statement required under this article shall contain the following information:

. . . .

(10) The source of each gift, including those described in subdivision (2), subsection (c), section five of this article, having a value of over \$100, received from a person having a direct and immediate interest in a governmental activity over which the person filing the statement has control, shall be reported by the person filing the statement when the gift is given to that person in his or her name or for his or her use or benefit during the preceding calendar year . . . .

### **Advisory Opinion**

The issue before the Ethics Commission is whether the Requester and the Board members must disclose the Foundation as the source of a gift of attendance and travel expenses to the Foundation's training conference. The Board members and the Requester are required to file Financial Disclosure Statements pursuant to W. Va. Code § 6B-2-6(a)(2) and (3), respectively. The Ethics Commission must determine whether

the Foundation is “a person having a direct and immediate interest in a governmental activity” over which the Requester and/or the Board members have control. W. Va. Code § 6B-2-7(a)(10).<sup>1</sup>

A rule of statutory construction is that “[w]hen a statute is clear and unambiguous and the legislative intent is plain, the statute should not be interpreted by the courts, and in such case it is the duty of the courts not to construe but to apply the statute.” Syl. pt. 5, *State v. Gen. Daniel Morgan Post No. 548, Veterans of Foreign Wars*, 144 W. Va. 137, 107 S.E.2d 353 (1959). When analyzing the statutory language to determine whether it is clear and unambiguous, courts “should give effect to the legislative will as expressed in the language of the statute . . . . Generally, words are given their common usage . . . . Courts are not free to read into the language what is not there, but rather should apply the statute as written.” *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.*, 194 W. Va. 770, 461 S.E.2d 516 (1995) (quoting *State ex rel. Frazier v. Meadows*, 193 W. Va. 20, 23-24, 454 S.E.2d 65, 68-69 (1994)).

Although W. Va. Code § 6B-2-7(a)(10) references gifts and cites to the Ethics Act’s gift provision at W. Va. Code § 6B-2-5(c), the gift provision does not use the phrase “direct and immediate” in its test for determining whether a public official may accept a gift. Further, the term “direct and immediate” is not used in the relevant [Legislative Rule](#), at W. Va. Code § 158 series 7, or elsewhere in the Ethics Act.

The Commission will therefore look to Black’s Law Dictionary for guidance on the plain meaning of the term. It defines “direct” as “3. Free from extraneous influence; immediate . . . .” *Direct*, Black’s Law Dictionary (9th ed. 2009). “Immediate” is defined as “1. Occurring without delay; instant. . . . 3) Having a direct impact; without an intervening agency.” *Immediate*, Black’s Law Dictionary (9th ed. 2009).

Therefore, applying the plain meaning of the words “direct” and “immediate” to the usage in W. Va. Code § 6B-2-7(a)(10), to be required to report the source of a gift over \$100 in value, the source of the gift must have an interest that is to occur without delay and the interest must have a direct impact on a specific governmental activity over which the public official has control.

The Foundation establishes the standards and qualifications related to the profession over which the State Board has oversight. The State Board does not regulate, certify, license, examine, or in any other way hold authority over the Foundation. The Foundation also does not have a registered lobbyist in West Virginia. The Ethics Commission finds that the interest the Foundation has in a governmental activity over which the Requester or Board members has control, if any, is not immediate and has no direct impact on the same.

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<sup>1</sup> The Foundation is a “person” as that term is defined in the Ethics Act. W. Va. Code § 6B-1-3(h).

**Therefore, the Ethics Commission holds that the Requester and the Board members do not have to disclose the Foundation as the source of a gift of the attendance, lodging, meals, and travel expenses paid for by the Foundation for attending the Foundation's training conference.**

*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, W. Va. Code §§ 6B-1-1 through 6B-3-11, and W. Va. Code § 61-10-15, 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.*

  
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Robert J. Wolfe, Chairperson  
West Virginia Ethics Commission