

Advisory Opinion 2025-08

Issued on October 2, 2025, by

The West Virginia Ethics Commission

Opinion Sought

A **County Board of Education Superintendent** asks whether a board member may privately contract with a service personnel employee to perform work through the employee's lawn mowing side business.

Facts Relied Upon by the Commission

The Requester asks whether a board of education (BOE) member may hire a BOE school service personnel employee,¹ who maintains a private side business, to repair the member's personal lawn mower. The BOE member explains that his riding lawn mower was not working, and a friend of his told him of a certain service employee who owns and operates a small business fixing lawn mowers out of his garage. The BOE member recognized the name of the service employee and contacted him directly. The service employee went to the member's house to pick up the mower for repairs. Instead, the service employee was able to repair the mower at the member's house by replacing a small part at a cost of only approximately \$60. The BOE member paid the employee's business for the part and services.

Code Provisions Relied Upon by the Commission

W. Va. Code § 6B-2-5(b)(1) provides:

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(o) provides:

¹ Pursuant to [West Virginia Code §18A-1-1\(e\)](#), "service personnel" are defined as "nonteaching school employees who serve a school or schools as a whole, in a nonprofessional capacity."

Except as provided in this section, a person who is a public official or public employee may not solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control. A person who is a public official or public employee may solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control when:

- (A) The solicitation is a general solicitation directed to the public at large through the mailing or other means of distribution of a letter, pamphlet, handbill, circular, or other written or printed media; or
- (B) The solicitation is limited to the posting of a notice in a communal work area; or
- (C) The solicitation is for the sale of property of a kind that the person is not regularly engaged in selling; or
- (D) The solicitation is made at the location of a private business owned or operated by the person to which the subordinate public official or public employee has come on his or her own initiative.

Advisory Opinion

W. Va. Code § 6B-2-5(o) is the provision of the Ethics Act that must be addressed in this request.² The provision prohibits soliciting “private business from a subordinate public official or public employee” over whom the soliciting public official/employee has the “authority to direct, supervise or control.” Consequently, the analysis must first begin with whether a subordinate relationship exists between the BOE member and service personnel employee, and if so, whether the BOE member has the authority to direct, supervise, or control this employee. In [Advisory Opinion 2025-04](#), the Commission, after analyzing several prior advisory opinions, found that the relationship between a BOE member and service personnel employee easily meets the definition of a subordinate relationship.

Thus, the Commission finds again that the service personnel employee is a subordinate of the BOE member, and the member has the authority to direct, supervise, or control the work of the service employee for purposes of W. Va. Code § 6B-5-2(o). There is no question that the BOE member “solicited” the services of the employee’s business.

The Commission will now consider the exceptions in W. Va. Code § 6B-2-5(o)(A)-(D) that may apply which would allow the BOE member to retain the services of the personnel employee’s lawn mower business. The exceptions are triggered when:

²A public contract issue under W. Va. Code § 6B-2-5(d) does not exist since the BOE member and service employee would be involved in a private arrangement. The BOE would not be a party to the contract.

- (A) The solicitation is a general solicitation directed to the public at large through the mailing or other means of distribution of a letter, pamphlet, handbill, circular, or other written or printed media; or
- (B) The solicitation is limited to the posting of a notice in a communal work area; or
- (C) The solicitation is for the sale of property of a kind that the person is not regularly engaged in selling; or
- (D) The solicitation is made at the location of a private business owned or operated by the person to which the subordinate public official or public employee has come on his or her own initiative.

The facts provided by the Requester clearly do not fall into any of these exceptions. Although the value of the business transaction was quite small at only \$60, there is no exception allowed for transactions below a certain threshold.

Therefore, the Commission finds that the Board of Education member may not solicit lawn mower repair services from the service personnel employee's lawn mower repair business as it would constitute solicitation of business from a subordinate in contravention of W. Va. Code § 6B-2-5(o).

The Requester is also subject to the prohibition in W. Va. Code § 6B-2-5(b)(1), above, which prohibits a public official or employee from using their position to coerce a subordinate to perform private work or activities. Finally, the Requester asks whether the fact that the BOE member discloses the transaction in a public meeting changes the outcome of today's holding. It does not.

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, 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.



Terry L. Walker, Acting Chairperson
West Virginia Ethics Commission

Advisory Opinion 2025-09

**Issued on October 2, 2025, by
The West Virginia Ethics Commission**

Opinion Sought

A **County Solid Waste Authority** asks whether it may solicit money from local businesses and individuals to cover potential shortfalls in operating costs in exchange for advertising their donations on a sign in the facility.

Facts Relied Upon by the Commission

The Requester is a county solid waste authority or “Authority.” County solid waste authorities are public agencies created by a county commission, as authorized by [W. Va. Code § 22C-4-3](#). These authorities are responsible for developing litter and solid waste control plans, approving solid waste facilities, and overseeing waste management services. The stated mission of a solid waste authority is to protect public health and welfare by providing solutions for comprehensive waste collection programs and recycling initiatives. It aims to inspire community pride and responsibility through source reduction, material recovery, and disposal solutions that foster environmental sustainability through public education and outreach.

The Authority has been approached by various individuals and businesses about how they might support the efforts of the Authority. The Authority would like to allow local businesses to sponsor advertising signs displayed inside the recycling center along the fence line, which currently sees an average of 250 cars per week. In addition, the Authority would like to offer businesses the opportunity to sponsor reusable recycling bags for residents. To recognize the support of individuals, it proposes to create a “Wall of Donors” on which the names of residential contributors will be displayed. All funds received will be deposited into a designated bank account for restricted use. The primary purpose of these funds will be to serve as an emergency reserve to cover hauling costs in the event the Authority experiences shortfalls in general funding. Any remaining funds at the end of each year will be used to sponsor local youth attendance at the West Virginia Department of Environmental Protection’s Youth Environmental Camp, to ensure that community support directly benefits both the Authority’s recycling program and its environmental education efforts.

Provisions Relied Upon by the Commission

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

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 is subordinate to the soliciting official or employee....

W. Va. Code R. § 158-7-6.2 provides:

The Ethics Commission may recognize programs or activities as involving a charitable purpose on a case-by-case basis.

W. Va. Code R. § 158-7-6.7 states:

6.7. State government agencies and the governing bodies of political subdivisions may solicit funds to support or underwrite agency programs which are statutorily created or authorized and are intended to help the poor and disadvantaged. If a state government agency or governing body of a political subdivision seeks to solicit funds for use by the agency for any other purpose, then the state government agency or governing body of a political subdivision must first seek permission from the Executive Director of the West Virginia Ethics Commission or the Ethics Commission through issuance of a formal advisory opinion. The Executive Director or Ethics Commission may only authorize such a solicitation if it serves a public purpose.

W. Va. Code R. § 158-7-6.8 states:

Fund-raising activities based on an exchange of value are not gift solicitations and are permissible.

Advisory Opinion

Acceptance of unsolicited donations or gifts

The Requester indicates that some businesses and individuals made the initial contact with the Authority seeking ways to help. In [Advisory Opinion 2012-08](#), after prohibiting the solicitation of donations for the purchasing shotgun/rifle racks, the Commission noted:

... the Commission's holding applies to solicitation by the Requester, and does not prevent the police department from accepting an unsolicited gift. As the Commission held in [A.O. 90-176](#), government agencies may accept gifts as an entity if the acceptance of such gifts inures to the benefit of the public generally or is in furtherance of the operation of the office. See also [A.O. 92-06](#). The key is that the gift is given to, and utilized by, the government agency, and is not for the personal, private gain of a particular public servant.

Similarly, in [Advisory Opinion 2019-19](#), before ruling that solicitation of donations to tint the courthouse windows was prohibited, the Commission noted:

The Ethics Act does not per se prohibit agencies from accepting unsolicited donations. As the Commission held in Advisory Opinion 1990-176, government agencies may accept gifts as an entity if the acceptance of such gifts inures to the benefit of the public generally or is in furtherance of the operation of the office. "The key is that the gift is given to, and utilized by, the government agency, and is not for the personal, private gain of a particular public servant." Advisory Opinion 2012-08.

Accordingly, the County Commission could accept the unsolicited donation of time and materials to tint seven windows of the judicial annex because the donation would be utilized by the Requester and not for the personal, private gain of a public official or employee.

The Commission holds that the Authority may accept unsolicited donations for an emergency fund to cover operating costs in the event of a future budget shortfall.

Soliciting donations

W. Va. Code § 6B-2-5(c)(1) prohibits a public employee or public official from soliciting any gift or donation unless the solicitation is for a charitable purpose.¹ W. Va. Code R. § 158-7-6.2 provides: "The Ethics Commission may recognize programs or activities as involving a charitable purpose on a case-by-case basis." Therefore, the Commission must initially consider whether establishing an emergency fund to cover potential budget shortfalls serves a charitable purpose for purposes of the Ethics Act.

In [Advisory Opinion 2005-02](#), the Commission stated, "As a general guideline, the Commission recognizes two main categories of programs or activities which constitute a charitable purpose: (1) Those which benefit the poor or disadvantaged; and, (2) Those which serve a public purpose or provide a significant public benefit."²

In Advisory Opinion 2012-08, the Ethics Commission held that a municipal police department was prohibited from soliciting funds for purchasing shotgun/rifle racks because the racks did not constitute a charitable purpose. The Commission reasoned that "[i]n seeking outside monetary assistance, . . . public agencies raise the potential for a coercive solicitation" and that the Commission "has been stringent in its holding that the overriding purpose of the solicitation must be to provide a benefit to the public as opposed to defraying the internal administrative costs of the [Agency]."

¹ See [Title 158 Series 07 Gifts & Charitable Contributions](#).

² See the following guideline: [Soliciting for Charity](#), which provides a list of those purposes the Commission has deemed to be charitable or not charitable.

Similarly, in Advisory Opinion 2019-19, the Commission held that public employees or public officials were not permitted to solicit funds for tinting glass at a judicial annex because it did not “benefit the poor or disadvantaged or otherwise provide a significant public benefit.” More recently in [Advisory Opinion 2025-07](#), the Commission held that upgrading training facilities to be used primarily by a police department was an administrative cost to be borne by the police department. As such, it did not constitute a charitable cause.

In the current situation, the primary purpose of the Authority's proposed effort is the creation of an emergency fund to cover operating costs in the case of funding shortfalls in the future. The Authority would benefit from the funds raised to provide an emergency fund to cover operating expenses during a potential budgetary shortfall. No direct benefit accrues to the poor, the disadvantaged, or to the general public as a whole.³

The Commission holds that an emergency fund to cover operating costs in the event of a future budget shortfall does not constitute a charitable purpose. Accordingly, public officials and public employees may not solicit donations for this purpose.

Fundraising through advertising

Next, the Commission must determine whether the proposed action by the Authority constitutes fundraising through an exchange of value. In making this determination, the Commission will follow the same analysis employed quite recently in Advisory Opinion 2025-07.

In [Advisory Opinion 2018-01](#), the Commission held:

While the Ethics Act imposes restrictions on the solicitation of gifts by public servants for the benefit of their agencies, there is no provision in the Act that bans a public agency from selling a thing of value, including advertising. See [Advisory Opinion 2014-05](#) (holding a state agency may sell advertising to help defray the costs of wellness tools on its website and cautioning the agency that it may not endorse a private entity or product) and [Advisory Opinion 1995-18](#) (holding that selling advertising does not constitute soliciting a gift, unless the advertising charge is merely a contribution in disguise or the advertising, on its face, renders no real benefit to the advertiser). Additionally, the Legislative Rule governing the solicitation and receipt of gifts expressly states: “Fund-raising activities based on an exchange of value are not gift solicitations and are permissible.” W. Va. Code R. § 158-7-6.8 (2008).

³ Sponsorship of local youth to attend the West Virginia Department of Environmental Protection's Youth Environmental Camp may well constitute a charitable cause. However, the funds would be utilized for this purpose *only* if unneeded to cover budgetary short falls. As such, this purpose must be considered only as a potential or residual purpose of the fund raising effort.

In [Advisory Opinion 2024-04](#), the Commission held that an association whose members are employees of a governmental agency, may sell advertising or sponsorships to raise funds to defray the costs of hosting an event when the proceeds from the event will be used for scholarships for continuing education opportunities and professional certifications for its members. The Commission reiterated the holding in [Advisory Opinion 1996-36](#) that such transactions are not mere solicitations for donations, “even if buyers may be motivated by a desire to benefit the sponsor, provided the [transaction] is legitimate and not a mere sham to disguise the solicitation of gifts.” In Advisory Opinion 2018-01, an agency “sold” the right to place the names of the sponsors of park benches in a public park.

In the present case, the Authority proposes to allow local businesses to display advertising signs inside the recycling center along the fence line and to create a “Wall of Donors” to recognize the contributions of individuals. As the Authority has not approached the potential sponsors, it does not know the amount of donations each sponsor may donate. Therefore, the Commission must consider whether the transactions offer a real exchange of value and are “legitimate and not a mere sham to disguise the solicitation of gifts.” Advisory Opinion 1996-36.

In Advisory Opinion 2025-07, the Commission held that “Exchange of value” is an idea borrowed from contractual law and is usually termed “consideration” or “valuable consideration.” Hence, it is to contract law that the Commission must search for guidance on the question of whether the value of consideration provided may be inadequate to support the validity of a contract or the existence of a legitimate “exchange of value.” Here, the advertising signs and the “Wall of Donors” would be located at the Authority’s recycling center, a location with significant public visibility.⁴ Accordingly, there is value to the business and the individual donors. Some may question whether this value is sufficient for a valid exchange of value. However, following the Commission’s reasoning in Advisory Opinion 2025-07, second guessing the wisdom of businesses or individuals involved in such transactions is not an area that the Commission feels compelled to enter.

The Commission notes that in *McCabe v. Monongahela Valley Traction Co.*, 97 W. Va. 306, 125 S.E. 92, (1924), the West Virginia Supreme Court of Appeals indicated that if parties are competent to contract, inadequacy of consideration does not render their contract void. In *Newell v. High Lawn Memorial Park Co.*, 164 W. Va. 511, 264 S.E.2d 454 (1980), the Supreme Court of Appeals of West Virginia reiterated the holding in *McCabe* with the further admonition, “Any person who is not suffering from some disability is entitled to dispose of his property in such manner as he pleases, and it is not the province of the Court to determine whether his bargains are wise, discreet, or profitable.”⁵

⁴The Authority also mentioned that it wished to offer businesses the opportunity to sponsor reusable recycling bags for residents. If such sponsorships are not recognized in some public fashion which provides valuable consideration to the businesses, this concept would not be a legitimate exchange of value and soliciting donations for this purpose would be prohibited.

⁵ However, the Court noted that the judicial system had not always been consistent in this stance.

The Ethics Commission holds that the advertising value to a business of a sign indicating its sponsorship and the prestige to an individual of being publicly recognized as a supporter is valuable consideration. The Commission will not speculate whether such a use of a business's advertising budget or individuals of their private resources is wise or prudent. The advertisements and recognition would be reasonably visible to the public, therefore, the proposed transactions would constitute an exchange of value. Accordingly, the officials or employees of the Authority may directly contact businesses and individuals and seek funds to establish an emergency fund to cover potential budgetary shortfalls in exchange for providing signs noting their sponsorship in locations accessible to the public.

Some conditions apply. As indicated in Advisory Opinion 2018-01:

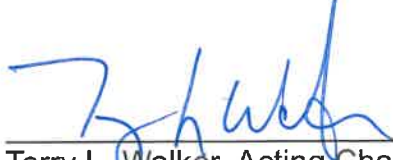
The sales solicitations must be made in a fair and even-handed manner. Potential sponsors may not be coerced into buying a sponsorship and may not receive unlawful or political favoritism in return for purchasing a sponsorship. See generally [Advisory Opinion 1993-08](#) and [Advisory Opinion 1996-19](#). County officials and employees conducting the sales solicitations may not endorse a person or business.

Whether a government agency has legal authority to sell sponsorships may be governed by other laws prescribing the powers of the government agency. Additionally, any money raised by the agency is public money and may only be used for authorized purposes.

Finally, in [Advisory Opinion 2014-15](#), the Commission held that in such situations, the agency must include a disclaimer with the advertisement, in this case the signs, making clear that the appearance of the advertising should not be construed as a commercial endorsement of a business's products or services.

This Advisory Opinion is based on 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.



Terry L. Walker, Acting Chairperson
West Virginia Ethics Commission

Advisory Opinion 2025-10

Issued on October 2, 2025, by

The West Virginia Ethics Commission

Opinion Sought

A **state employee**, working as an events manager, asks whether she may personally use Marriott bonus points that accumulated from her arranging hotel accommodations for the agency's officials and employees.

Facts Relied Upon by the Commission

An events manager for a state office, whose duties include making travel reservations for officials and employees, plans training sessions across West Virginia that require using state funds for overnight accommodations. She has asked whether she may use bonus points accumulated from her public duties at the Marriott for personal use. The Marriott has suggested that she use these points for both state office use (to obtain free rooms) and occasional personal use.

Code Provisions Relied Upon by the Commission

[W. Va. Code § 6B-2-5\(b\)](#) provides, in part:

(1) 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.... 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.

(2) Notwithstanding the general prohibition against use of office for private gain, public officials and public employees may use bonus points acquired through participation in frequent traveler programs while traveling on official government business: Provided, That the official's or employee's participation in such program, or acquisition of such points, does not result in additional costs to the government.¹

Advisory Opinion

The Commission's analysis will begin with a brief overview of the history of the exception for "bonus points" acquired from "frequent travel programs" from the prohibited private gain provision. The Legislature created the exception in W. Va. Code § 6B-2-5(b)(2) in 2008. Prior to the 2008 amendment, the Ethics Commission had

¹ The Commission need not analyze the prohibited gifts provision found in W. Va. Code § 6B-5-2(c) as the Marriott's bonus points program is available to all its customers. See [Advisory Opinion 1990-118](#).

issued a series of advisory opinions prohibiting government officials and employees from using rewards or bonus points earned while on state travel.² [Advisory Opinion 1998-14](#) summarized this line of opinions as follows:

The Commission has consistently held that promotional benefits resulting from official travel expenditures, such as airline or motel bonus points, belong to the public and may be used only for official purposes. These benefits, like other public resources, may not be converted to the personal use and private gain of public servants, regardless of what a private company may permit its employees to do.

Since the 2008 amendment, the Commission has interpreted the private gain “bonus points” exception in only one opinion, [Advisory Opinion 2019-13](#). The Commission determined, in that Opinion, that bonus points earned from gasoline stations were included in the category of “frequent traveler programs” for purposes of the bonus points exception. Therefore, the Commission held that state agency employees may use their personal rewards cards when purchasing gasoline for their own travel with a state-issued credit card and keep the bonus points for their personal use. The bonus points from the purchase of gasoline, just like those earned from hotels and airlines, did not have to be used for the state’s benefit, e.g., to offset future state travel expenses.

The question today is whether the Requester may use the bonus points associated with the travel arrangements she makes for *other* employees and officials in her state office. The Commission will first examine the plain language of the provision as the rules of statutory construction provide.³ The plain language of the exception allows public employees to keep bonus points acquired through “participation in frequent traveler programs while traveling on official government business.” The provision does not indicate which public employee or official’s participation in the traveler program is required. Does the employee who is traveling get to keep the bonus points, or is it permissible for someone who makes the reservation on behalf of the traveler(s), such as the Requester, to keep the bonus points? Because this question is not plainly answered by the language used in the provision, the legislative intent of the provision must be construed.

The Commission notes that the Legislature amended the Ethics Act to add the bonus points exception after the Commission issued a series of advisory opinions, which are

² See Advisory Opinions [1990-64](#), [1990-100](#), [1990-105](#), [1990-118](#), [1990-132](#), and [1998-14](#).

³ “To glean legislative intent, “[w]e look first to the statute’s language. If the text, given its plain meaning, answers the interpretive question, the language must prevail and further inquiry is foreclosed.” *Appalachian Power Co. v. State Tax Dep’t of West Virginia*, 195 W. Va. 573, 587, 466 S.E.2d 424, 438 (1995). In other words, “[a] statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given full force and effect.” Syl. pt. 2, *State v. Epperly*, 135 W. Va. 877, 65 S.E.2d 488 (1951). Conversely, “[a] statute that is ambiguous must be construed before it can be applied.” Syl. pt. 1, *Farley v. Buckalew*, 186 W. Va. 693, 414 S.E.2d 454 (1992). *Teets v. Miller*, 237 W. Va. 473, 788 S.E.2d 1 (W. Va. 2016). See also, [West Virginia Legislature Bill Drafting Manual](#) (2022) provides at p.58 in the section on “General Rules of Statutory Construction: “Where language is clear and plain, the court will not look to the Legislature’s intent.... Legislative intent will be pursued if possible and will be followed even if it is not the literal meaning of the words. Rules of construction may be invoked only where the language is ambiguous.”

identified in footnote 2, in which public officials were denied using the bonus points acquired from their traveling for state business for their own private use. None of these Opinions had denied an official or employee who made reservations on behalf of others from keeping the points. Therefore, had the Legislature intended for any employee, other than the traveler, to use these points, it would have made this clear in the amendment. Also, the Commission believes the Legislature did not intend to create a windfall to the employee who happens to be responsible for making travel arrangements for his/her public office. The Commission finds that the legislative intent was to allow the traveling public official or employee to use the bonus points.

The Ethics Commission holds that W. Va. Code § 6B-2-5(b)(2) does not allow the Requester to personally use Marriott bonus points that accumulated from her arranging hotel accommodations for the agency's officials and employees other than herself. These points could be used personally by the traveling official or employee or for future state travel to reduce the cost to the state.

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 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.



Terry L. Walker, Acting Chairperson
West Virginia Ethics Commission