

ADVISORY OPINION NO. 2000-21

Issued On September 7, 2000 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **State Employee** asks if she may endorse a training program she attended in the course of her employment.

FACTS RELIED UPON BY THE COMMISSION

The employee coordinates a specialized law enforcement program for a State Agency. The employee received specialized training which provided a model for the specific program she subsequently adapted and implemented in West Virginia. The Trainer has asked the employee to provide a "letter of recommendation" for the training she received. Neither the employee nor the State Agency will receive any compensation for the recommendation provided. The Trainer plans to incorporate the employee's comments into a brochure promoting future training sessions. The employee proposes to identify the training she received from the Trainer as a "blueprint for success" and give explicit credit to the Trainer in such terms as, "by following [the Trainer's] instructions, we feel that this . . . program works!!!!!!!!!"

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(b), *Use of public office for private gain*, provides in 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.

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The Ethics Act prohibits public servants from using their public positions for their own private financial gain or the private financial gain of others. An employee's endorsement of a particular Trainer could constitute a use of office for private gain and might be a violation of the Ethics Act.

In A.O. 98-22, the Commission determined that no provision in the Ethics Act prohibits a public official from permitting a public company to reference its work with a State Agency in a brochure "which does not contain a product endorsement from the Agency or the public official." However, in A.O. 2000-19, issued today, the Commission ruled that a State Agency may not serve as a "reference account" for a Vendor's software if the indorsement tends to promote the Vendor's private business, and no overriding public benefit for the State or its citizens has been demonstrated. Similar to the reference proposed in A.O. 2000-19, the proposed indorsement presented in this request involves more than a simple reference; it includes a subjective evaluation of the product (training) in affirmative, if not laudatory, terms.

The Commission finds that a state employee who endorses a particular training program she attended in her official capacity would be using her public position to provide an indirect pecuniary benefit to the individual or entity which furnishes the training program being endorsed. Therefore, the employee should not provide the proposed endorsement to the Trainer because it would involve using the prestige of her office for the private gain of another, conduct prohibited by the Ethics Act in W. Va. Code § 6B-2-5(b).

The Commission notes that, consistent with A.O. 98-22, this opinion is not intended to prohibit the employee from giving permission to list the employee and her State Agency as a previous customer of the Trainer.

In addition, the employee may, subject to her own Agency's rules and regulations, discuss the merits of the Trainer's training program with other current or potential users who may contact her.


Chairman