

## **ADVISORY OPINION NO. 2005-10**

**Issued On June 2, 2005 By The**

### **WEST VIRGINIA ETHICS COMMISSION**

#### **OPINION SOUGHT**

A **State Division Director** asks whether there is any prohibition in the Ethics Act against him appearing in an advertisement for a local automobile dealer.

#### **FACTS RELIED UPON BY THE COMMISSION**

The requester is a Division Director in a State Agency which regulates motor vehicles. The requester has purchased a vehicle from a local automobile dealer. The dealer has asked if the requester will provide a testimonial concerning the quality of the vehicle. The testimonial would be in the form of an audio-taped message which may be used in a radio advertisement. A photograph of the requester may also be used for a print advertisement. The requester would not be compensated for providing the testimonial nor would he use his title.

The requester, through his position as a division director, has significant responsibilities. The requester does not directly regulate automobile dealers but is a high ranking official within the agency.

#### **CODE PROVISIONS RELIED UPON BY THE COMMISSION**

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

#### **ADVISORY OPINION**

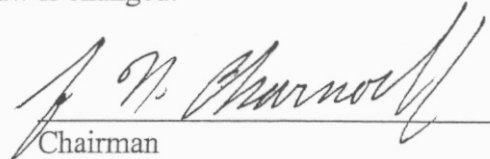
The general rule is that a public official may not endorse a particular product or business. (A.O. 2005-02 and A.O. 2002-18). A commercial endorsement of a product or business is only permissible when it results in an overriding public benefit.

In the present case, the Commission must first determine whether an endorsement by a State Division Director in his personal capacity amounts to the endorsement of a product by a State Agency. While the requester does not intend to use his title, he has significant management responsibilities within a State Agency which regulates motor vehicles. The Commission finds that although his title would not be used, due to the prestige of his position, providing the testimonial would be construed as an endorsement of a product by a State Agency.

Since the proposed course of action constitutes the endorsement of a product by a State Agency of a commercial product, it is only permissible if it results in an overriding public benefit. The Commission finds that the endorsement of a motor vehicle does not provide an overriding benefit to the public. The only benefit is to the automobile dealer who would generate goodwill through the use

of the testimonial of a respected member of the community. If the requester was a private citizen, that would be acceptable. However, due to the prestige and responsibilities of his position, he should not allow the use of his name or image for the proposed advertisements.

This advisory opinion is limited to questions arising under the Ethics Act, W.Va. Code § 6B-1-1, *et. seq.*, 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.



Chairman