

# Advisory Opinion 2021-06

Issued on May 6, 2021, by

The West Virginia Ethics Commission

## Opinion Sought

A **College Professor** of political science asks whether he may:

- 1) Use public funds to purchase meals for students attending college-approved events at the State Capitol and other off-campus locations, and
- 2) Invite a candidate for public office to speak to his class without extending an invitation to all candidates in the same race.

## Facts Relied Upon by the Commission

The Requester is a professor of political science at a public college. He seeks guidance on using public funds to purchase meals for students at college-approved events at the State Capitol and other places off campus.

The Requester further seeks guidance on inviting candidates for public office to speak to his political science class.

## Code 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 R. § 158-6-5.

Use or Removal of Government "Property." 5.1. Removal - Public officials and public employees may not remove government property from the workplace for their private benefit or that of another person. 5.2. Improper Use - Public officials and public employees may not use government property for personal projects or activities that result in private gain. 5.3. This section does not apply to the *de minimis* use of government property.

## **ADVISORY OPINION**

### *Use of public funds – meals for students.*

The Ethics Act permits the expenditure of public funds when there is a legitimate government purpose for the expenditure and the expenditure is authorized by law.<sup>1</sup> The Ethics Commission has held that an “expenditure . . . may constitute the unlawful use of [public] office for private gain if the overriding benefit is to the public official or employee as opposed to the agency or public.” Advisory Opinion 2018-04 (finding that it does not violate the Ethics Act for a state agency to pay lodging expenses for a public employee’s overnight travel if the agency complies with the State Travel Rules.)

In Advisory Opinion 2014-01, the Ethics Commission held that a county economic development authority may use public funds to purchase box lunches for county officials and citizens while they attended a County Day at the Legislature event. In Advisory Opinion 2001-18, the Commission held that an ambulance authority may provide free lunches to authority employees while they attended training sessions on their own time. The Commission ruled “[t]he Act would not prevent the Authority from offering meals and refreshments as an inducement to encourage employees to voluntarily attend such training sessions on their own time, without pay.” In Advisory Opinion 2018-02, the Ethics Commission discussed the general rules and summarized past opinions applying to the use of public funds to purchase meals.

The mission of public universities and colleges (“higher education institutions”) is to educate students, and one goal of higher education institutions is to create “a learning environment that is student-friendly and that encourages and assists students in the completion of degree requirements, certifications or skill sets within a reasonable period of time.” W. Va. Code Ann. § 18B-1-1a (5) (West). The Legislature has also authorized governing boards of higher education institutions to “make funds available from tuition and fees to support extracurricular activities of the students as considered necessary.” W. Va. Code Ann. § 18B-10-12 (West).

**The Ethics Commission finds that it does not violate the Ethics Act for public higher education institutions to authorize the expenditure of public funds for meals for college-approved student events, regardless of whether the event is held on or off campus, if the expenditure is for a legitimate government purpose, e.g., the education of students. Public higher education institutions must also comply with their own policies and other state laws and rules governing hospitality and meal expenditures for students.**

### *Political candidate –invitation to speak in the classroom.*

The Ethics Act prohibits public employees from performing campaign activities during public work hours and prohibits the use of public resources to subsidize an election campaign. For example, in Advisory Opinion 1996-14, the Ethics Commission expressly

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<sup>1</sup> Advisory Opinions 2020-04 and 2020-14.

held that “the office space, phones, stationary and other items provided to the public employee for use in the performance of his public responsibilities may not be used to subsidize an election campaign.” The Ethics Commission reiterated the restrictions on the use of public resources for election campaigns in Advisory 2019-29 wherein it held that a sheriff’s office employee may seek election to a partisan public office but may not campaign during public work hours or use public resources to subsidize his campaign.<sup>2</sup>

Based upon its prior Opinions and the plain language in the Act, the Ethics Commission finds that public higher education institutions may not use public resources to support or promote a candidate for public office. The Ethics Commission must consider, therefore, whether inviting a political candidate to speak to a professor’s political science class, without giving the same opportunity to other candidates, constitutes the use of public resources to support or promote a candidate.

The Ethics Commission finds that when a political candidate is invited to speak to a class at a higher education institution about his or her platform, then the candidate is given the opportunity to sway potential voters to vote for him or her. **The Ethics Commission holds, therefore, that it violates the private gain provision in the Ethics Act, W. Va. Code § 6B-2-5(b), to exclusively invite and allow one candidate to speak to a class at a public institution of higher education about his or her platform without giving other candidates in the same political race the same opportunity. The Ethics Commission finds that if a candidate is invited to speak about how to become a candidate or other educational matters that do not involve electioneering, then there is no requirement in the Ethics Act that an invitation to speak to a class be extended to other candidates.**

The Ethics Commission declines to find that in all instances all candidates in a political race must be invited to speak to a class. For example, a race may have twenty candidates, and it may not be practical to invite all of them to speak to a class. Nevertheless, inviting candidates to speak to a classroom must be done in a manner that does not materially promote one candidate over another.

The Ethics Commission further finds guidance issued by the University of Wisconsin-Madison on political activities on campus to be useful advice. The University’s guidance states, in relevant part, as follows:

***Is it important that institutions sponsor political events that offer opportunities to all candidates seeking election to the same political office?***

Yes. A balanced approach is required. For example, all campaigns of candidates seeking election to the same political office should be offered the same or a similar opportunity to participate in a university-sponsored event. However, if when offered the opportunity, one or more candidates decline, it is still appropriate to host the event for those who have accepted

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<sup>2</sup> In Advisory Opinion 2019-14, the Ethics Commission held that a city police officer may not include pictures of himself in uniform in his campaign material because the police uniform conveys the endorsement of his police agency, which is the type of private gain the Ethics Act is intended to prohibit.

the invitation. During the event a statement should be made indicating that all candidates were provided with an equal opportunity to participate.

It should be noted, however, that the same principle does not necessarily apply to candidates who speak to a class at the invitation of an instructor. For example, a professor who invites a Republican legislator to speak to a class on the history of the Republican Party is not obligated to invite the legislator's Democratic opponent. The invitation, however, should relate to the course material and should not be for the purpose of advancing one political candidate over another.

[Political activity on campus: Guidelines for the 2020 campaign \(wisc.edu\)](https://news.wisc.edu/political-activity-on-campus-guidelines-for-the-2020-campaign/) (Sec. III, No. 2).<sup>3</sup>

**In conclusion, a public higher education institution may not exclusively invite one candidate to speak about his or her platform to a class.**<sup>4</sup>

*This Advisory Opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester may 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.*

  
Robert J. Wolfe, Chairperson  
WV Ethics Commission

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<sup>3</sup> <https://news.wisc.edu/political-activity-on-campus-guidelines-for-the-2020-campaign/>, (last visited April 21, 2021).

<sup>4</sup> Public higher education institutions are also governed by other laws, including S.B. 657, which passed during the 2021 Regular Legislative Session, relating to free expression on state institutions of higher education campuses.