ADVISORY OPINION NO. 2010-19

Issued On December 2, 2010 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

An **Elected Public Official** asks whether his office may use public funds to purchase funeral flowers.

FACTS RELIED UPON BY THE COMMISSION

Over the past several years, individuals associated with the Sheriff's office, including a former Sheriff and immediate family members of employees, have passed away. On each occasion, the Sheriff has sent a flower arrangement, or similar expression of sympathy, on behalf of the entire Sheriff's Office to the funeral home or family of the deceased.

To date, the Sheriff has personally paid for the flowers and/or other expressions of sympathy from his personal funds. However, the Requester desires to know whether, under certain limited circumstances, public funds may be used to purchase the flowers since it is an expression of sympathy on behalf of the entire sheriff's office, and not personally from him.

The Requester acknowledges that expenditures of public monies should not be used to send flowers throughout the county as a way to garner support or favor from persons or entities. Instead, the Requester seeks permission, with limitations, to spend public funds to purchase bereavement flower arrangements and/or other expressions of sympathy.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code§ 6B-2-5(b) reads 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.

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In determining whether an expenditure of public funds violates the Ethics Act, the Commission relies upon the common law, West Virginia Code, Legislative Rules, Attorney General Opinions and opinion letters issued by the Auditor's Office to determine whether there is express or implied authority for the expenditure.

The Commission is unable to find express or implied authority to use public funds for this purpose. The Commission hereby finds that, in the absence of statutory authority by the Legislature or other government agency authorized to opine on whether such expenditure is authorized, the purchase of funeral flowers or other expressions of sympathy, including monetary donations, constitutes an impermissible use of public office for private gain.

In reaching this conclusion, the Commission is aware that giving a gesture of sympathy on behalf of the office when a colleague or immediate family member of an employee passes away is a common tradition. However, in regard to whether public funds may be used, the Commission is charged with upholding the prohibitions of the Ethics Act. Therefore, the Commission must base its decision on whether the expenditure is authorized, even if the result seems harsh.

Accordingly, in the absence of express authority, the Commission hereby finds that the use of public funds to purchase flowers or other expressions of sympathy, including monetary donations, is prohibited under the Ethics Act.

Additionally, public servants may not solicit subordinate employees for a contribution towards the purchase of flowers or payment into an established office fund. Instead, if an expression of sympathy is desired, co-workers may take up a voluntary donation among themselves, under the following conditions:

(1) A public servant may never solicit a gift or contribution from which he or she may personally benefit.

(2) A public servant may never coerce a gift or contribution.

(3) Supervisors should not solicit their subordinates for a contribution.

(4) Any effort to collect contributions will be limited to asking for a maximum contribution of $5 per person. (Employees are free to contribute more or less, if they choose to do so.).

(5) Requests for contributions should be disseminated in a general announcement to all employees using such methods as an internal memo, E-mail, bulletin board notice or staff meeting announcement. Any such announcement should clearly convey that participation is voluntary, free of any coercion, and that employees may contribute less than the recommended

amount, or nothing at all. Reasonable reminders are permissible. Supervisors should not sign or distribute these announcements to their subordinates.

(6) Information regarding the identity of the persons who contributed or the amount contributed by any individual should be limited to the individual(s) overseeing the contributions. Neither the identity nor amount of contributions from any particular person may be disclosed to the recipient of the flowers or other expression of sympathy.

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 other public agencies unless and until it is amended or revoked, or the law is changed.

/s/ R. Kemp Morton, Chairman

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