

Advisory Opinion 2019-02

Issued on February 7, 2019, by

The West Virginia Ethics Commission

Opinion Sought

A **State Agency Manager** asks whether public funds may be used to print business cards that include personal contact information for part-time elected public officials.

Facts Relied Upon by the Commission

The Requester's agency provides administrative services for a group of part-time elected public officials. The Requester's agency has printed business cards reflecting the elected officials' public titles and contact information, i.e., public office address, phone number and email address, for years. The Requester states that some of these public officials want the Requester to also include personal contact information on the business cards, i.e., personal address, phone number and email address, as a means of being more accessible to their constituents. The Requester states that the personal information being requested on the business cards does not include the names of businesses or campaign-related information.

Provisions Relied Upon by the Commission

W. Va. Code § 6B-2-5(b) provides, in pertinent 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. 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-2B-2(b)(1) provides:

Public officials, their agents, or anyone on public payroll may not use public funds, including funds of the office held by the public official, public employees, or public resources to distribute, disseminate, publish, or display the public official's name or likeness for the purpose of advertising to the public.

W. Va. Code § 6B-2B-1(a) provides, in pertinent part:

“Advertising” means publishing, distributing, disseminating, communicating, or displaying information to the public through audio, visual, or other media tools with the purpose of promoting the public official or a political party.

Advisory Opinion

The Ethics Commission must determine whether the Ethics Act’s private gain provision, at W. Va. Code § 6B-2-5(b), or the name or likeness provision, at W. Va. Code § 6B-2B-2, prohibits the use of public funds to print business cards that include elected officials’ personal contact information.

Private Gain

The Ethics Commission has previously stated the following when describing the purpose of the Ethics Act’s private gain provision, “The Ethics Act’s prohibition against the use of office for private gain is designed to prevent public servants from misusing the influence of their public positions for their own private financial gain or that of their friends, relatives, business associates or cronies.” Advisory Opinion 2003-03; *see also* Advisory Opinion 2003-09.

The private gain provision explicitly states, however, that 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(b). The Commission finds that it is common practice for part-time, elected officials to give their constituents their personal contact information. For example, the Requester’s agency’s website provides much of the personal contact information for these public officials. Based on the facts presented, there is nothing to suggest that the elected officials have requested their personal contact information to be included on their state-issued business cards to conduct personal business or for campaign purposes. The Commission further finds that providing this additional contact information for the purpose of making public officials more accessible serves a public purpose.

The Ethics Commission concludes that the use of public funds to print personal contact information on elected officials’ business cards is part of the usual and customary duties associated with the office of an elected official and serves a public purpose. The inclusion of personal contact information would not therefore violate the private gain provision of the Ethics Act.

Name or Likeness

The name or likeness provision of the Ethics Act prohibits a public official from using public resources for “the purpose of promoting the public official or a political party.” W. Va. Code §§ 6B-2B-2(a) and (b)(1).

The Ethics Commission has held in two prior Advisory Opinions that the name or likeness provision did not prohibit the use of public funds to pay for business cards for public officials. In Advisory Opinions 2015-19 and 2015-20, a county assessor asked whether his office could use public funds to purchase business cards which included the assessor's name, public title and the assessor's office's contact information. The Commission held in both Opinions that a county assessor could use public funds to pay for the business cards because they did not have the "primary intent or effect of promoting a public official." The Commission reasoned that business cards are used in the "usual and customary course of the Requester's public job duties and are accordingly permissible." Advisory Opinion 2015-19.

The Commission has addressed business cards that contain personal information. In Advisory Opinion 2016-11, the Commission considered business cards that on one side displayed the same contact information that the Commission had previously approved in Advisory Opinions 2015-19 and 2015-20. The other side of the proposed business cards, however, reflected the Requester's personal campaign information. The Requester paid for the business cards without using public funds, so the name or likeness provision was not invoked.

The instant situation is distinguishable from that in Advisory Opinion 2016-11 because the personal information would be printed on the business cards using public funds. The Commission finds, though, that the primary purpose of including personal information is to make the public officials more accessible to their constituents rather than to promote the public officials.

The Ethics Commission concludes that the use of public funds to print personal contact information on elected officials' business cards does not have the primary purpose of promoting the elected officials and does not therefore violate the name or likeness provision of the Ethics Act.

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, at 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.

/s/ Robert J. Wolfe
Robert J. Wolfe, Chairperson
West Virginia Ethics Commission