

## **Advisory Opinion 2019-13**

**Issued on May 3, 2019, by**

**The West Virginia Ethics Commission**

### **Opinion Sought**

An **Officer of a State Agency** asks whether he may use his personal rewards cards when purchasing gasoline with a state-issued credit card and keep the bonus points for his personal use.

### **Facts Relied Upon by the Commission**

The State's Fleet Management Office ("FMO") is responsible for maintaining all state vehicles. The FMO has a contract with Automatic Rentals Inc. for the State's vehicle maintenance and fuel credit card program (also referred to as the "universal fleet card program"). Automatic Rentals Inc. produces a list of authorized retailers, e.g., gas stations, to serve as fuel retailers in the state's universal fleet card program. According to the FMO, most fuel retailers in the United States participate in the State's fuel credit card program.

Many fuel retailers offer rewards programs in which purchases of fuel or merchandise earn reward points that are accumulated by an account holder. These points may be redeemed for discounts on merchandise and future fuel purchases. Many state employees who use the State's fuel credit card for state-related travel are personal members of the retailers' rewards programs. According to the FMO, the State is not a member of any gasoline rewards programs and the personal use by employees of reward points associated with the fuel used for state-related uses would not create additional costs to the State.

### **Provisions Relied Upon by the Commission**

W. Va. Code § 6B-2-5(b) states, in relevant 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.

(2) Notwithstanding the general prohibition against use of office for private gain, public officials and public employees may use bonus points acquired through participation in frequent traveler programs while traveling on official government business: *Provided*, That the official's or employee's participation in such program, or acquisition of such points, does not result in additional costs to the government.

### **Advisory Opinion**

The Legislature, in 2008, added subsection (2) to the private gain provision of the Ethics Act, at W. Va. Code § 6B-2-5(b). Prior to the 2008 amendment, the Ethics Commission had issued a series of Advisory Opinions prohibiting government employees from using rewards or bonus points earned while on state travel.<sup>1</sup> Advisory Opinion 1998-14 summarized this line of Opinions as follows:

The Commission has consistently held that promotional benefits resulting from official travel expenditures, such as airline or motel bonus points, belong to the public and may be used only for official purposes. These benefits, like other public resources, may not be converted to the personal use and private gain of public servants, regardless of what a private company may permit its employees to do.

As for personal bonus points earned from the State's gasoline purchases, in particular, Advisory Opinion 1990-118 states:

The Commission finds that it would be a violation of the Ethics Act for the Delegate to receive bonus points for the portions of the purchase of gasoline which would be reimbursed with State funds (.20 per mile). The Legislator may receive bonus points for private expenses which are not reimbursed with State funds. The value of any points accumulated and not paid for by the State belong to the individual.

Since 2008, however, W. Va. Code § 6B-2-5(b)(2) has allowed public officials and employees to use bonus points acquired through participation in "frequent traveler programs" while traveling on official government business if the use does not result in additional costs to the government. The personal use of reward points would not create additional cost to the government.

The question here is whether a gasoline retailer's rewards program qualifies as a "frequent traveler program" as used in the W. Va. Code § 6B-2-5(b)(2). The Commission recognizes that not all gasoline purchases are made while a public official or employee is travelling out of town. Traveler is defined as "one that goes on a trip or journey ...." <https://www.merriam-webster.com/dictionary/traveler>. One definition of travel is "to move or undergo transmission from one place to another" <https://www.merriam-webster.com/dictionary/travel>. The Commission finds that the intent of the 2008

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<sup>1</sup> See Advisory Opinions 1990-64, 1990-100, 1990-105, 1990-118, 1990-132 and 98-14.

amendment to the private gain provision was to read the word “traveler” broadly to include both local travel and out-of-town travel.

**The Ethics Commission holds, therefore, that, pursuant to W. Va. Code § 6B-2-5(b)(2), the Requester may use his personal rewards cards when purchasing gasoline with a state-issued fuel credit card and keep the points for his personal use.**

*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, 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  
West Virginia Ethics Commission