Advisory Opinion 2017-20

Issued on August 3, 2017, by

The West Virginia Ethics Commission

Opinion Sought

A **Municipal Police Chief** asks whether police officers in his department may attend a "Coffee with Cops" event hosted by a local fast-food restaurant.

Facts Relied Upon by the Commission

A local fast-food restaurant ("Restaurant") has asked city police officers to participate in a community policing event called "Coffee with Cops" to be held at the Restaurant. The Restaurant provided the Requester with a flyer that outlines the purposes of the event and the activities that would occur. The flyer states:

> Oftentimes when citizens interact with police officers, it may be under unfavorable circumstances. Coffee with Cops is an event that invites citizens and police officers to meet at a local [fast-food restaurant] to discuss matters in their neighborhood. This community event is also an opportunity for local law enforcement to promote local safety or community outreach efforts of their own.

The Restaurant would provide free coffee to the public, including the police officers, during the event.[1]

The Requester states that the event would build good relations between local law enforcement and the community and provide an opportunity for local law enforcement to be seen in a good light. The officers would present and promote police community outreach programs, such as child safety seat checks and the citizens' police academy.

Finally, the flyer states that the Restaurant would encourage photographs that could "be shared in local press outreach or on [the Restaurant's] social media channels."

Provisions Relied Upon by the Commission

W. Va. Code§ 6B-2-S(b) provides:

> (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

[1] Free coffee is not a prohibited gift to public officials or employees under W. Va. Code§ 6B-2-5(c) when the coffee is provided and consumed in "the presence of the donor or sponsoring entity." See Advisory Opinion 94-39. Since the event would be held at the Restaurant, further analysis of the Act's prohibited gift provision is not warranted.

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.

Advisory Opinion

The Ethics Act generally prohibits public officials and employees from using their office for their own private gain or for the private gain of another. W. Va. Code § 6B-2-5(b). The Ethics Commission has previously ruled that the private gain provision in the Ethics Act prohibits a public official or public employee's "commercial endorsement of a product or business unless it results in an overriding public benefit." Advisory Opinion 2016-10 (quoting Advisory Opinion 2015-17) (internal quotations omitted).

In Advisory Opinion 2013-45, the Commission was asked to determine whether a municipality's police officers could participate in a program with a local restaurant wherein the police officers would hand out reward coupons with the individual officers' signature on them to private citizens for performing good deeds. The Commission held that the act of handing out coupons was tantamount to a product endorsement by the police officers because a reasonable citizen could find that the officer was actively promoting the local restaurant.

Here, the police officers would be attending the event to meet citizens in the community and to discuss community issues. There are no facts to indicate that the officers would be handing out promotional items for the Restaurant or giving testimonials in favor of the Restaurant.

The Commission recognizes that the Restaurant has a commercial incentive to bring in members of the public to its business. The purpose of the police officer's participation in the event, however, is not to endorse the Restaurant, but rather to discuss community issues, develop community relations, strengthen community policing and promote their own community outreach programs. Although a reasonable citizen could view a police officer handing out coupons to a restaurant with their signature on it as actively promoting the business, a reasonable citizen would likely see the "Coffee with Cops" event as an opportunity for the officers to strengthen community relations and promote police community outreach programs. Therefore, the police officers would not violate the private gain provision of the Act by participating in the "Coffee with Cops" event.

Finally, the Commission has considered the name/likeness provision of the Ethics Act at W. Va. Code§ 6B-2B-2(b). To the extent the photographs would be used by either news outlets or on the Restaurant's social media pages, the Ethics Commission will not instruct private citizens or the media about what pictures may be published as the event is public.

There is also no indication that any public funds or resources would be used or that the photographs would be used on the City or police department's social media pages or webpages. Therefore, the name/likeness provisions of the Ethics Act under W. Va. Code § 6B-2B-2(b) would not be implicated.

The Ethics Commission holds that the police officers would not be improperly endorsing the Restaurant in violation of the Act by attending a "Coffee with Cops" event at the Restaurant. The Ethics Commission cautions the officers who attend to not engage in any activities that could be considered promoting the Restaurant, such as giving testimonials or handing out promotional items.

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.

/s/ Robert J. Wolfe, Chairperson
Robert J. Wolfe, Chairperson