

Advisory Opinion 2017-24

Issued on October 5, 2017, by The

West Virginia Ethics Commission

Opinion Sought

The **Director of a State Agency** asks whether the Ethics Act prohibits the agency from including a link on its website to a cyber liability insurance producer for the benefit of a group of entities it insures but for which it does not provide cyber liability coverage.

Facts Relied Upon by the Commission

The state agency is required by statute to provide property and liability insurance to all state entities. The agency is authorized, but not required, to provide property and liability insurance to some non-state entities, such as counties, municipalities and charitable organizations. The eligible non-state entities may purchase insurance through the state agency or through the commercial insurance market.

The agency recognizes cyber liability as a significant risk, and as such, has procured cyber liability insurance coverage for state entities. However, the agency does not offer cyber liability coverage to non-state entities.

For certain coverages and under certain circumstances in which the state benefits, the state agency has purchased a "true transfer of risk" policy from a commercial carrier. The agency has provided cyber liability coverage to state agencies in this manner from a Cyber Liability provider "cyber provider."

The Requester asks whether the Ethics Act prohibits the agency from including a link on its website to the state's cyber producer's website. The link would enable the non-state entities for which the agency currently does not provide cyber liability coverage to explore the provider's coverage options and to request a quote. The Requester states that it would not endorse the insurance provider, its services, or any product it may sell. Further, the agency would place a disclaimer on its website explicitly stating it is not endorsing the insurance producer, its services, or its products.

Provisions Relied Upon by the Commission

W. Va. Code § 6B-2-5(j) 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.

Advisory Opinion

The Ethics Commission has addressed similar situations in Advisory Opinions that are instructive in the instant situation.

In Advisory Opinion 2009-12, the Commission held that the Ethics Act's private gain provision did not prohibit a state entity from offering payroll deductions to employees to purchase retail products from a commercial entity. The state entity stated it would provide an equal opportunity to similarly situated retailers to use the same payroll deduction program. The Commission reasoned that the purpose of the private gain provision is to ensure that a person or business is not unlawfully favored to the detriment of another and to prevent endorsing a product or business. The Commission found that the payroll deduction program which contained a disclaimer and was made available to other retailers did not violate the Ethics Act.

In Advisory Opinion 2014-15, the Commission held that the Ethics Act did not prohibit a state agency responsible for providing state employees with medical and life insurance from selling advertising space to retailers in the form of banners and sidebars on the agency's website. In the instant situation, the state agency is not selling advertising; however, the Opinion is instructive. The Commission held in relevant part, "the website must include a disclaimer making clear that the appearance of advertising should not be construed as an endorsement of any particular vendor or product. Further, the Requester must allow equal access for advertising on its website to all businesses or class of businesses related to health and wellness." The Commission imposes the same standards here on the Requester's agency.

Accordingly, the Ethics Commission holds that the Ethics Act does not prohibit the state agency from including a link on its website to its cyber liability insurance producer for the benefit of non-state entities. The agency must, however, allow equal access on its website to all producers for cyber liability insurance and include a disclaimer explicitly stating it is not endorsing the producer, any insurance carrier, or its services or products.

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 W. Va. Code§ 61-10-15 and does not purport to interpret

other laws or rules.

In accordance with W. Va. Code § 68-2-3, 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