

# Advisory Opinion 2025-03

Issued on March 6, 2025, by

The West Virginia Ethics Commission

## Opinion Sought

A **County Clerk** asks whether she may approve the payment of county funds for elected county officials to attend Leadership West Virginia's annual program.

## Facts Relied Upon by the Commission

The Requester, a county clerk, is responsible for approving payments from the county treasury. See [W. Va. Code § 7-5-4](#), which provides: "No money shall be paid by the sheriff out of the county treasury except upon an order signed by the president and clerk of the county court, and properly endorsed. . . ." <sup>1</sup> The Requester has asked whether, in the event an elected county official requests the County to pay for his or her attendance at the annual [Leadership West Virginia](#) program, she is authorized to approve the request. The West Virginia Leadership website states: "Leadership West Virginia is an innovative program that grows, engages, and mobilizes leaders to ignite a lifelong passion to move West Virginia forward."<sup>2</sup> The program consists of two-day meetings each month at different locations in West Virginia. The [annual program costs](#) \$4,000. The fee covers costs for all required program events excluding lodging, transportation, and meals en route.

## Code Provisions Relied Upon by the Commission

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

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<sup>1</sup> See also [W. Va. Code § 7-1-3](#).

<sup>2</sup> [Leadership West Virginia](#) is a non-profit organization. The [website](#) also states:

**Leadership West Virginia pursues the following objectives to develop a new generation of leaders:** To bring together emerging leaders who represent a broad spectrum of professional, personal, and geographic diversity. To give these individuals knowledge of significant state issues on a level and to a degree that they would not otherwise have had. To heighten their awareness and sensitivity through fresh insight and broadened perspectives. To develop a core of knowledgeable, dedicated, and motivated individuals who will undertake a variety of leadership responsibilities. To build a statewide network of alumni and establish linkages that will contribute to improved communications and a greater understanding of and involvement in critical issues. Today, LWV has a statewide network of more than 1,500+ alumni across the state. Many are actively involved in the program and their communities with the mission to find solutions that will aid West Virginia's future growth and prosperity.

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**

### *Authorized expenditures*

The Requester asks whether the Ethics Act would prohibit her from approving the use of county funds to pay for elected public officials to participate in the annual Leadership West Virginia program. In [Advisory Opinion 2022-10](#), the Commission reaffirmed its position taken in [Advisory Opinion 2018-02](#):

If a public official or public employee makes an unauthorized expenditure, it may constitute the unlawful use of office for private gain if the overriding benefit is to the public official or employee, or another person, and not to the government agency. The Commission held in Advisory Opinion 2016-09 that “the Ethics Act permits the expenditure of public funds if there is a legitimate government purpose for the expenditure.” Advisory Opinion 2015-12, *citing* Advisory Opinion 2012-27.

In [Advisory Opinion 2022-10](#), a county assessor asked, among other things, whether travel-related expenses for attending a conference may be paid by the county assessor’s office. The Requester stated that his attendance at past conferences had increased his skill and knowledge in his public position by increasing the accuracy of his Office’s assessments and revenue to the county. He stated that there was significant benefit to the county and state from his involvement in the Association. The Opinion stated:

Over the years, he [the assessor] has gained invaluable knowledge on matters that are directly related to his public job duties and responsibilities. He has also been made aware of the national, state, regional, and local trends impacting the valuation of property through continued communication and networking with experts across the country. His involvement with the Association has resulted in more accurate and uniform assessments in his County and has increased the County’s revenues. Finally, his membership has prepared him to more effectively interact with taxpayers and to defend his Office’s valuations of properties before the County Board of Assessment Appeals, the Office of Tax Appeals, and courts of law.

Therefore, the Commission held that there was an overriding public benefit that justified the county paying the expenses associated with the assessor’s attendance at the conference.

**The Requester in this case is directed to follow the same analysis as the Commission has followed in the advisory opinions above. Specifically, the Requester's approval of using county funds for an elected county official to attend the annual West Virginia Leadership program would not violate the Ethics Act if there is express or implied authority to do so or if there is an overriding public benefit that justifies the County paying these expenses.**

*Duty of public officials when approving payments*

The next issue to address is what measures the Requester must take to ensure that county funds are being used for a legitimate purpose that provides an overriding public benefit.

For context, the Ethics Commission has found that public officials could violate the Act by participating in or ratifying another public official's improper private gain in violation of the Ethics Act. See, for example, [Advisory Opinion 1997-30](#), in which the Commission held that a town recorder was prohibited from issuing payment for services under a contract that she knew to be in violation of the Ethics Act. In that case, the payment would have been made to a business owned by the mayor. Under the Ethics Act, at W. Va. Code § 6B-2-5(d)(1), this would be a prohibited contract. Also, the Ethics Commission found that council members who vote to approve knowingly illegal payments may also violate the Act. *Id.*

In [Advisory Opinion 2019-24](#), the Commission held that a town council may not approve and pay an invoice submitted by the previous mayor's wife if the previous mayor made, participated in making, or in any way attempted to use his office to influence the town's decision with respect to his wife's work. Further in [Advisory Opinion 1995-44](#), the Commission noted that the West Virginia Supreme Court of Appeals held, in *Hunt v. Allen*, 53 S.E.2d 509 (1948), "that county board members who voted to pay for goods known to have been sold to the board by another board member in violation of W. Va. Code § 61-10-15, were guilty of official misconduct and subject to removal from office, even though they had no personal financial interests in the purchases voted upon."

The Ethics Commission finds that a public official, who is responsible for approving the payment of public funds that may result in unlawful private gain to another public official, may rely on a reasonable assertion that the expense provides an overriding public benefit to the public official who is requesting the expenditure. A public official may not, however, approve an expenditure that is illegal on its face or illegal under the particular circumstances known by the public official who is charged by law to approve public expenditures.

**The Ethics Commission finds that using public funds to pay the fee, costs, and expenses associated with the annual Leadership West Virginia program is not illegal on its face. Therefore, if an elected public official claims that his or her participation in the program provides an overriding public benefit to the county or state, and the request is not illegal on its face or illegal under the particular circumstances known by the public official, then the public official may approve the payment under 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, W. Va. Code §§ 6B-1-1 through 6B-3-11, W. Va. Code § 61-10-15 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