

Advisory Opinion 2025-04

Issued on April 3, 2025, by

The West Virginia Ethics Commission

Opinion Sought

A **County Board of Education member** asks whether he may hire a county school bus operator to drive him to and from his private business office in the member's personal vehicle during times the bus operator is not on county time.

Facts Relied Upon by the Commission

The Requester, a county board of education (BOE) member, has a physical condition that prevents him from driving. The Requester owns a van with a wheelchair lift that he uses to travel back and forth to his business. The Requester would like to retain a bus operator, who the Requester personally knows, to drive the van for him. The Requester states that the bus operator would only do this work after his morning and evening school bus runs, when he is off hours, as well as on some weekends, and that no BOE property would be used. The Requester further states that, as a member of the BOE, he does not directly supervise the bus operator, who reports directly to the transportation supervisor, who reports to the superintendent of schools. The superintendent reports directly to the BOE.

Code Provisions Relied Upon by the Commission

W. Va. Code § 6B-2-5(b)(1) provides:

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-2-5(o) provides:

Except as provided in this section, a person who is a public official or public employee may not solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control. A person who is a public official or public employee

may solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control when:

- (A) The solicitation is a general solicitation directed to the public at large through the mailing or other means of distribution of a letter, pamphlet, handbill, circular, or other written or printed media; or
- (B) The solicitation is limited to the posting of a notice in a communal work area; or
- (C) The solicitation is for the sale of property of a kind that the person is not regularly engaged in selling; or
- (D) The solicitation is made at the location of a private business owned or operated by the person to which the subordinate public official or public employee has come on his or her own initiative.

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W. Va. Code § 6B-2-5(o) is the provision of the Ethics Act that must be addressed in this request.¹ The provision prohibits soliciting “private business from a subordinate public official or public employee” over whom the soliciting public official/employee has the “authority to direct, supervise or control.” Consequently, the analysis must first begin with whether a subordinate relationship exists between the Requester and bus operator, and if so, whether the Requester has the authority to direct, supervise, or control the bus operator.

These initial questions of the relationship between the Requester and the bus operator are easily dispensed with. In [Advisory Opinion 1998-20](#), a county board of education member sought an opinion on whether this provision of the Ethics Act² would prevent him from selling security systems to board of education employees. The requester claimed that his BOE membership did not give him direct management authority over employees and therefore the prohibition against soliciting private business from a subordinate did not apply. The Commission disagreed, finding that “W. Va. Code § 18-5-1 provides specifically that each school district shall be under the supervision and control of a County Board of Education and WV Code § 18-5-13, which sets out the general powers and duties of the County Boards, clearly establishes that Board members have the requisite authority.”³

¹ A public contract issue under W. Va. Code § 6B-2-5(d) does not exist since the Requester and bus driver would be involved in a private arrangement.

² In 1998, subsection (o) was located in subsection (m) of W. Va. Code § 6B-2-5.

³ The Legislature or Commission has not promulgated any rule interpreting § 6B-2-5(o). The Commission will look at the definition of the term “supervise” found in W. Va. Code R. § 158-6-3.3 (2022)(Nepotism) for some guidance: “3.3. As used in this section, the term “supervise” or “supervision” means reviewing, auditing or evaluating work, or taking part in discussions or making recommendations concerning employment, assignments, compensation, bonuses, benefits, discipline, or related matters.” Based on this definition, a BOE member does supervise BOE employees.

Therefore, the Commission finds that the bus operator is a subordinate of the Requester, and the Requester has the authority to direct, supervise, or control the work of the bus operator for purposes of W. Va. Code § 6B-5-2(o).

The next issue is whether the driving services sought by the Requester qualify as private “business” under this provision of the Act. The Requester is not selling a product to the bus operator, as occurred in Advisory Opinion 1998-20, but nonetheless, is using the bus operator’s services in driving the Requester to and from work. Since the prohibition under W. Va. Code § 6B-2-5(o) is against the solicitation of “business,” it must be determined whether the arrangement between the Requester and bus operator is a business one. Unfortunately, neither the Ethics Act, advisory opinions, nor rules appear to provide any guidance on the definition of business, rendering its definition one of first impression for the Commission.

The definition of “business” can encompass a number of items. The Cambridge Dictionary includes in its definition of business: 1) the activity of buying and selling goods and services; and 2) work that you do to earn money.⁴ The West Virginia State Tax Department employs a definition of “business” that is more broad: “Business activity” shall mean and include all purposeful revenue-generating activity engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect.”⁵ Consequently, the proposed service by the bus operator to chauffeur the Requester to and from work clearly falls within the definition of “business” as that term is used not only in everyday parlance but also as defined by the State.

Finally, having found that the arrangement between the Requester and the bus driver falls within the definition of “business” under W. Va. Code § 6B-2-5(o), the Commission will determine whether any of the following exceptions to the prohibition would apply, allowing the Requester to retain the bus operator’s driving services:

- (A) The solicitation is a general solicitation directed to the public at large through the mailing or other means of distribution of a letter, pamphlet, handbill, circular, or other written or printed media; or
- (B) The solicitation is limited to the posting of a notice in a communal work area; or
- (C) The solicitation is for the sale of property of a kind that the person is not regularly engaged in selling; or
- (D) The solicitation is made at the location of a private business owned or operated by the person to which the subordinate public official or public employee has come on his or her own initiative.

The facts provided by the Requester clearly do not fall into any of these exceptions.

⁴ [BUSINESS | definition in the Cambridge English Dictionary](#)

⁵ [W. Va. Code §11-12-1\(b\)\(2\)](#)

Therefore, the Commission finds that the Board of Education member may not retain the bus operator, as a subordinate subject to the direction, supervision, and control of the Requester, as his driver or chauffeur as it would constitute solicitation of business in contravention of W. Va. Code § 6B-2-5(o).

The Requester is also subject to the prohibition in W. Va. Code § 6B-2-5(b)(1), above, which prohibits a public official or employee from using their position to coerce a subordinate to perform private work or activities.

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