

Advisory Opinion 2025-06

Issued on September 4, 2025, by

The West Virginia Ethics Commission

Opinion Sought

A **Town Council** asks whether it may give its employees free garbage services and whether it is more permissible if the town enacts a policy providing free garbage services as a fringe benefit to boost employee morale and as a form of wage increase.

Facts Relied Upon by the Commission

The Requester provides garbage services to town residents at a cost of approximately \$200 annually. The Requester would like to provide these services to town employees free of charge. The Town could implement a policy authorizing this complimentary service as a fringe benefit to enhance employee morale and as an alternative to a wage increase. The Requester has approximately 21 employees.¹

Provisions Relied Upon by the Commission

W. Va. Code § 6B-2-5(b) provides in 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 or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain...

Advisory Opinion

The Ethics Commission has dealt with similar issues in the past. In [Advisory Opinion 2008-07](#), a town council had asked whether it was permissible to grant employees complimentary access to the municipal pool as an employee benefit, with the stated purpose of enhancing staff morale and offsetting the inability to provide a wage increase. The Commission noted: “Municipalities may establish the compensation, including fringe benefits, of its employees... and [c]onferring the fringe benefit... would only be prohibited if there is no rational basis for this management decision.” In support of this holding, the Commission cited its earlier holding in [Advisory Opinion 2008-05](#), which permitted employees free use of the county parks and recreation commission

¹ It is not clear how this benefit would apply to town employees who are not within the town limits, but it is suggested that if allowed, the Requester would simply have these employees bring their refuse to the town dumpster.

facilities. The rationale was that such use would benefit employees and enhance morale at no additional expense to the County.”² The Commission determined that providing free use of the swimming pool was reasonably connected to the legitimate government objective of boosting employee morale and incurred minimal additional expense for town taxpayers.

Further, in [Advisory Opinion 2002-04](#), the Ethics Commission held that the Act authorized a county commission to use public funds for YMCA memberships for county employees as an effort to increase its employees’ health and welfare and reduce health-related costs. The Commission also determined, in [Advisory Opinion 2004-09](#), that the Ethics Act permitted a university’s employees to accept a ten percent YMCA discount as part of the university’s initiative to reduce healthcare delivery costs.

In [Advisory Opinion 2008-09](#), the Commission allowed a public university to give a ten-percent discount to faculty and staff on university bookstore purchases (excluding textbooks). The Commission noted that offering such discounts is a common practice to recruit and retain employees. The Commission observed that the discount could stimulate bookstore sales. Additionally, the widespread use of university logo apparel might foster a stronger sense of community within the college.

In the aforementioned Opinions, the Commission applied substantially the same analysis as in its recent opinions to determine the permissibility of certain public expenditures where an element of private gain is a potential outcome. The most recent opinion, [Advisory Opinion 2025-03](#), held that a county clerk may approve the use of county funds for an elected county official to attend the annual West Virginia Leadership program **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.** (emphasis added)

The Commission finds that the proper standard for allowing a fringe benefit under the Ethics Act is the same standard used to determine whether a public expenditure is authorized.³ The Ethics Commission in applying the Ethics Act cannot engage in management decisions, nor should the Commission be in the business of playing “armchair quarterback” to a public body’s expenditures unless the expenditure is clearly for the personal benefit of a public official, employee, or third party.

The Requester wishes to increase morale of its employees by providing additional compensation, possibly in the form of a fringe benefit - free garbage services. The Requester states that providing the benefit in this manner will avoid additional increases in its budget. Although the Requester used the term “employee morale,” the Commission finds that the primary intent is to increase the compensation of its employees. The Commission has enacted a guideline for employee morale expenditures, [Public Employees Appreciation and Retirement Events](#), which is

² In [Advisory Opinion 2008-05](#), the Commission approved public employees’ free access to a park and recreation commission’s facilities, including the golf course.

³ Using this language is preferable to the “rational basis for the management decision” language found in [Advisory Opinion 2008-07](#).

intended to limit using public funds for the sole purpose of improving employee morale. The Requester however is authorized and required, in [W. Va. Code § 8-5-12⁴](#), to “by ordinance fix or cause to be fixed the salary or compensation of every municipal officer and employee.” Municipalities also have “plenary power and authority to provide by ordinance for the allowance of time off of officers and employees with pay for vacations and illness and for personnel management incentives, as additional consideration for their services and employment.”

The Commission’s guideline is not intended to interfere with state law: It states: “The guidance does not supplant other laws authorizing public agencies to recognize employees, such as laws authorizing agencies to implement employee recruiting or retention programs or to give an employee a salary increase based on exemplary performance or tenure.” Therefore, the above-referenced Code section gives express authority to the Requester to enact ordinance(s) concerning employees pay and other work incentive packages.

The Commission holds that the Ethics Act does not prohibit the Requester from providing free garbage services to its employees.

The Requester should adopt an appropriate ordinance conferring compensation. The Commission would caution the Requester to consult its legal counsel regarding any tax or other implications associated with providing the free garbage service to town employees and the State Auditor’s Office for issues involving employee bonuses.

This Advisory Opinion is based on 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 § 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

⁴ (a) Notwithstanding any charter provision to the contrary, the governing body of every municipality shall by ordinance fix or cause to be fixed the salary or compensation of every municipal officer and employee: *Provided*, That the salary of any officer shall not be increased or diminished during his or her term.

(b) The governing body of every municipality shall have plenary power and authority to provide by ordinance for the allowance of time off of officers and employees with pay for vacations and illness and for personnel management incentives, as additional consideration for their services and employment.