

# Advisory Opinion 2025-07

Issued on September 4, 2025 by

The West Virginia Ethics Commission

## Opinion Sought

A **City Police Department** asks whether it may solicit funding from or sell advertising to private businesses for a major upgrade of the department's firearms training facility.

## Facts Relied Upon by the Commission

The Requester has a firearms training facility that is outdated and in disrepair. The facility primarily serves as a firearms training center for the City, but municipal, state, and federal agencies also use the facility. Additionally, the Requester anticipates offering firearms safety classes and community workshops to the public. While public access would be controlled, these activities would allow the public to use the facilities for a reasonable fee to participate in structured, supervised training scenarios alongside law enforcement officers with the goal of strengthening trust and fostering positive relationships with the community.

The cost of the update and repair of the facility is estimated to be in excess of \$250,000 and would go beyond the resources of the City. Accordingly, the Requester would like to seek grants and other sources of funding. As such, the Requester asks if it may approach businesses within the community to request financial donations or building materials for the facility. In exchange for sponsoring portions of the upgrades, the Requester would install appropriate plaques or signs in locations visible to the public, either outside of the refurbished facility near a sports complex with abundant foot traffic and/or in the place of business of an entity sponsoring the project. The Requester believes these signs and plaques would serve as valuable advertising and the donations may qualify as tax-deductible donations given the public safety purpose of the facility.<sup>1</sup>

## Provisions Relied Upon by the Commission

*W. Va. Code § 6B-2-5(c)(1) states, in relevant part:*

A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: Provided, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or

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<sup>1</sup> The Ethics Commission does not have the authority to determine whether these donations would be tax deductible.

employee of the state and whose position is subordinate to the soliciting official or employee....

*W. Va. Code R. § 158-7-6.2 provides:*

The Ethics Commission may recognize programs or activities as involving a charitable purpose on a case-by-case basis.

*W. Va. Code R. § 158-7-6.7 states:*

6.7. State government agencies and the governing bodies of political subdivisions may solicit funds to support or underwrite agency programs which are statutorily created or authorized and are intended to help the poor and disadvantaged. If a state government agency or governing body of a political subdivision seeks to solicit funds for use by the agency for any other purpose, then the state government agency or governing body of a political subdivision must first seek permission from the Executive Director of the West Virginia Ethics Commission or the Ethics Commission through issuance of a formal advisory opinion. The Executive Director or Ethics Commission may only authorize such a solicitation if it serves a public purpose.

*W. Va. Code R. § 158-7-6.8 states:*

Fund-raising activities based on an exchange of value are not gift solicitations and are permissible.

## **Advisory Opinion**

### *Soliciting for charitable purposes*

W. Va. Code § 6B-2-5(c)(1) prohibits a public employee or public official from soliciting any gift unless the solicitation is for a charitable purpose.<sup>2</sup> As to what constitutes a charitable purpose, W. Va. Code R. § 158-7-6.2 provides: "The Ethics Commission may recognize programs or activities as involving a charitable purpose on a case-by-case basis." Therefore, the Commission must initially consider whether refurbishing the City's firearms facility serves a charitable purpose for purposes of the Ethics Act.

In [Advisory Opinion 2005-02](#), the Commission stated,

As a general guideline, the Commission recognizes two main categories of programs or activities which constitute a charitable purpose: (1) Those

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<sup>2</sup> See [Title 158 Series 07 Gifts & Charitable Contributions](#).

which benefit the poor or disadvantaged; and, (2) Those which serve a public purpose or provide a significant public benefit.<sup>3</sup>

In [Advisory Opinion 2012-08](#), the Ethics Commission held that a municipal police department was prohibited from soliciting funds for purchasing shotgun/rifle racks because the racks did not constitute a charitable purpose. The Commission reasoned that "[i]n seeking outside monetary assistance, . . . public agencies raise the potential for a coercive solicitation" and that the Commission "has been stringent in its holding that the overriding purpose of the solicitation must be to provide a benefit to the public as opposed to defraying the internal administrative costs of the [Agency]."

Similarly, in [Advisory Opinion 2019-19](#), the Commission held that public employees or public officials were not permitted to solicit funds for tinting glass at a judicial annex because it did not "benefit the poor or disadvantaged or otherwise provide a significant public benefit."

The current situation involves upgrading training facilities to be used primarily by the Requester's police department. The Commission recognizes that other law enforcement agencies and the public may also benefit from the upgrades. Nonetheless, however necessary or salutary it is to provide the services to others, it primarily falls within the realm of an administrative cost to be borne by the police department.

**Furthermore, the Commission holds that the facility upgrade does not provide a significant public benefit. Accordingly, public officials and public employees may not solicit donations for this purpose.**

The inquiry does not stop here. The Commission must next determine whether the proposed action by the City police department constitutes fundraising through an exchange of value.

#### *Fundraising through advertising*

In [Advisory Opinion 2018-01](#), the Commission held:

While the Ethics Act imposes restrictions on the solicitation of gifts by public servants for the benefit of their agencies, there is no provision in the Act that bans a public agency from selling a thing of value, including advertising. See [Advisory Opinion 2014-05](#) (holding a state agency may sell advertising to help defray the costs of wellness tools on its website and cautioning the agency that it may not endorse a private entity or product) and [Advisory Opinion 1995-18](#) (holding that selling advertising does not constitute soliciting a gift, unless the advertising charge is merely a contribution in disguise or the advertising, on its face, renders no real benefit to the advertiser). Additionally, the Legislative Rule governing the

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<sup>3</sup> See the following guideline: [Soliciting for Charity](#), which provides a list of those purposes the Commission has deemed to be charitable or not charitable.

solicitation and receipt of gifts expressly states: "Fund-raising activities based on an exchange of value are not gift solicitations and are permissible." W. Va. Code R. § 158-7-6.8 (2008).

In [Advisory Opinion 2024-04](#), the Commission held that an association whose members are employees of a governmental agency, may sell advertising or sponsorships to raise funds to defray the costs of hosting an event when the proceeds from the event will be used for scholarships for continuing education opportunities and professional certifications for its members. In the opinion, the Commission reiterated the holding in [Advisory Opinion 1996-36](#) that such transactions are not mere solicitations for donations, "even if buyers may be motivated by a desire to benefit the sponsor, provided the [transaction] is legitimate and not a mere sham to disguise the solicitation of gifts."

In Advisory Opinion 2018-01, the agency "sold" the right to place the names of the sponsors of park benches in a public park. The cost of a park bench may be significant,<sup>4</sup> but it is surely less than the cost of renovation of a facility. The Requester has not approached the potential sponsors, so the City does not know the amount of donations each sponsor may donate. Therefore, here, the Commission must consider whether the transactions offer a real exchange of value and are "legitimate and not a mere sham to disguise the solicitation of gifts." Advisory Opinion 1996-36. "Exchange of value" is an idea borrowed from contractual law and is usually termed "consideration" or "valuable consideration." Hence, it is to contract law that the Commission must search for guidance on the question of whether the value of consideration provided may be inadequate to support the validity of a contract or the existence of a legitimate "exchange of value."

Here, the plaques and signs would be located in two places. The first place is on the outside of the training facility. The facility itself would not be open to the public (unless a person is using the facilities). However, the facility is located adjacent to a city park with a sports complex. As such, the signs would be visible to people using the trails and walkways of the park as well as the sports complex. The second location would be within the store or place of business of the sponsoring business. In *McCabe v. Monongahela Valley Traction Co.*, 97 W. Va. 306, 125 S.E. 92, (1924), the West Virginia Supreme Court of Appeals held:

If the parties were competent to contract, mere inadequacy of consideration would not render their contract void. A valuable consideration, however small and nominal, if given or stipulated for in good faith, in the absence of fraud, is sufficient to sustain a contract. *Rhoades v. Railway Company*, 49 W. Va. 494; *Lowther Oil Company v. Guffey*, 52 W. Va. 91; *Lovett v. Oil Company*, 68 W. Va. 670.

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<sup>4</sup> A typical basic six-foot recycled plastic bench typically costs between \$400 and \$700; however, a quality wooden memorial bench of cedar, teak, or oak can cost up to \$2,200. Moreover, adding custom engravings or customized plaques with messages to a bench will add to the expense. See [Memorial Benches for Parks](#).

In *Newell v. High Lawn Memorial Park Co.*, 164 W. Va. 511, 264 S.E.2d 454 (1980), the Supreme Court of Appeals of West Virginia reiterated the holding in *McCabe* with the further admonition:

Any person who is not suffering from some disability is entitled to dispose of his property in such manner as he pleases, and it is not the province of the Court to determine whether his bargains are wise, discreet, or profitable.

However, as noted in *Newell*, the courts have not always been consistent in this stance.

The doctrine of failure of consideration in the law of contracts is certainly a nebulous one; cases can be found where the slightest consideration is adequate to support a contract while others can be found in which substantial consideration has been held to be "insufficient." The doctrine finds its counterpart in the Uniform Commercial Code provision on unconscionability where the learned commentators on that section are slightly more candid in addressing the inherently subjective nature of the process by which courts review bargains made by individuals.

*Newell v. High Lawn Memorial Park Co.*, 164 W.Va. 511, 264 S.E.2d 454 (1980), 518.

**The Ethics Commission holds that the advertising value to a business of a plaque or sign indicating its sponsorship constitutes valuable consideration. The Commission finds no need to speculate whether a business's use of its advertising budget is a wise one. The advertising would be visible to the public; therefore, the proposed transactions would constitute an exchange of value. Accordingly, the officials or employees of the City's police department may directly contact and seek funds or materials to renovate its training facility from businesses in exchange for plaques or signs noting the sponsorship of the business in locations accessible to the public.**

Some conditions apply. As indicated in Advisory Opinion 2018-01:

The sales solicitations must be made in a fair and even-handed manner. Potential sponsors may not be coerced into buying a sponsorship and may not receive unlawful or political favoritism in return for purchasing a sponsorship. See generally [Advisory Opinion 1993-08](#) and [Advisory Opinion 1996-19](#). County officials and employees conducting the sales solicitations may not endorse a person or business.

Whether a government agency has legal authority to sell sponsorships may be governed by other laws prescribing the powers of the government agency. Additionally, any money raised by the agency is public money and may only be used for authorized purposes.

Finally, in [Advisory Opinion 2014-15](#), the Commission held that in such situations, the agency must include a disclaimer with the advertisement, in this case the signs, making clear that the appearance of the advertising should not be construed as an endorsement.

*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