

Advisory Opinion 2025-09

Issued on October 2, 2025, by

The West Virginia Ethics Commission

Opinion Sought

A **County Solid Waste Authority** asks whether it may solicit money from local businesses and individuals to cover potential shortfalls in operating costs in exchange for advertising their donations on a sign in the facility.

Facts Relied Upon by the Commission

The Requester is a county solid waste authority or “Authority.” County solid waste authorities are public agencies created by a county commission, as authorized by [W. Va. Code § 22C-4-3](#). These authorities are responsible for developing litter and solid waste control plans, approving solid waste facilities, and overseeing waste management services. The stated mission of a solid waste authority is to protect public health and welfare by providing solutions for comprehensive waste collection programs and recycling initiatives. It aims to inspire community pride and responsibility through source reduction, material recovery, and disposal solutions that foster environmental sustainability through public education and outreach.

The Authority has been approached by various individuals and businesses about how they might support the efforts of the Authority. The Authority would like to allow local businesses to sponsor advertising signs displayed inside the recycling center along the fence line, which currently sees an average of 250 cars per week. In addition, the Authority would like to offer businesses the opportunity to sponsor reusable recycling bags for residents. To recognize the support of individuals, it proposes to create a “Wall of Donors” on which the names of residential contributors will be displayed. All funds received will be deposited into a designated bank account for restricted use. The primary purpose of these funds will be to serve as an emergency reserve to cover hauling costs in the event the Authority experiences shortfalls in general funding. Any remaining funds at the end of each year will be used to sponsor local youth attendance at the West Virginia Department of Environmental Protection’s Youth Environmental Camp, to ensure that community support directly benefits both the Authority’s recycling program and its environmental education efforts.

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 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

Acceptance of unsolicited donations or gifts

The Requester indicates that some businesses and individuals made the initial contact with the Authority seeking ways to help. In [Advisory Opinion 2012-08](#), after prohibiting the solicitation of donations for the purchasing shotgun/rifle racks, the Commission noted:

... the Commission's holding applies to solicitation by the Requester, and does not prevent the police department from accepting an unsolicited gift. As the Commission held in [A.O. 90-176](#), government agencies may accept gifts as an entity if the acceptance of such gifts inures to the benefit of the public generally or is in furtherance of the operation of the office. See also [A.O. 92-06](#). The key is that the gift is given to, and utilized by, the government agency, and is not for the personal, private gain of a particular public servant.

Similarly, in [Advisory Opinion 2019-19](#), before ruling that solicitation of donations to tint the courthouse windows was prohibited, the Commission noted:

The Ethics Act does not per se prohibit agencies from accepting unsolicited donations. As the Commission held in Advisory Opinion 1990-176, government agencies may accept gifts as an entity if the acceptance of such gifts inures to the benefit of the public generally or is in furtherance of the operation of the office. "The key is that the gift is given to, and utilized by, the government agency, and is not for the personal, private gain of a particular public servant." Advisory Opinion 2012-08.

Accordingly, the County Commission could accept the unsolicited donation of time and materials to tint seven windows of the judicial annex because the donation would be utilized by the Requester and not for the personal, private gain of a public official or employee.

The Commission holds that the Authority may accept unsolicited donations for an emergency fund to cover operating costs in the event of a future budget shortfall.

Soliciting donations

W. Va. Code § 6B-2-5(c)(1) prohibits a public employee or public official from soliciting any gift or donation unless the solicitation is for a charitable purpose.¹ 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 establishing an emergency fund to cover potential budget shortfalls 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 which benefit the poor or disadvantaged; and, (2) Those which serve a public purpose or provide a significant public benefit."²

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]."

¹ See [Title 158 Series 07 Gifts & Charitable Contributions](#).

² See the following guideline: [Soliciting for Charity](#), which provides a list of those purposes the Commission has deemed to be charitable or not charitable.

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.” More recently in [Advisory Opinion 2025-07](#), the Commission held that upgrading training facilities to be used primarily by a police department was an administrative cost to be borne by the police department. As such, it did not constitute a charitable cause.

In the current situation, the primary purpose of the Authority's proposed effort is the creation of an emergency fund to cover operating costs in the case of funding shortfalls in the future. The Authority would benefit from the funds raised to provide an emergency fund to cover operating expenses during a potential budgetary shortfall. No direct benefit accrues to the poor, the disadvantaged, or to the general public as a whole.³

The Commission holds that an emergency fund to cover operating costs in the event of a future budget shortfall does not constitute a charitable purpose. Accordingly, public officials and public employees may not solicit donations for this purpose.

Fundraising through advertising

Next, the Commission must determine whether the proposed action by the Authority constitutes fundraising through an exchange of value. In making this determination, the Commission will follow the same analysis employed quite recently in Advisory Opinion 2025-07.

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 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).

³ Sponsorship of local youth to attend the West Virginia Department of Environmental Protection's Youth Environmental Camp may well constitute a charitable cause. However, the funds would be utilized for this purpose *only* if unneeded to cover budgetary short falls. As such, this purpose must be considered only as a potential or residual purpose of the fund raising effort.

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. 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, an agency “sold” the right to place the names of the sponsors of park benches in a public park.

In the present case, the Authority proposes to allow local businesses to display advertising signs inside the recycling center along the fence line and to create a “Wall of Donors” to recognize the contributions of individuals. As the Authority has not approached the potential sponsors, it does not know the amount of donations each sponsor may donate. Therefore, 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.

In Advisory Opinion 2025-07, the Commission held that “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 advertising signs and the “Wall of Donors” would be located at the Authority’s recycling center, a location with significant public visibility.⁴ Accordingly, there is value to the business and the individual donors. Some may question whether this value is sufficient for a valid exchange of value. However, following the Commission’s reasoning in Advisory Opinion 2025-07, second guessing the wisdom of businesses or individuals involved in such transactions is not an area that the Commission feels compelled to enter.

The Commission notes that in *McCabe v. Monongahela Valley Traction Co.*, 97 W. Va. 306, 125 S.E. 92, (1924), the West Virginia Supreme Court of Appeals indicated that if parties are competent to contract, inadequacy of consideration does not render their contract void. 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.”⁵

⁴The Authority also mentioned that it wished to offer businesses the opportunity to sponsor reusable recycling bags for residents. If such sponsorships are not recognized in some public fashion which provides valuable consideration to the businesses, this concept would not be a legitimate exchange of value and soliciting donations for this purpose would be prohibited.

⁵ However, the Court noted that the judicial system had not always been consistent in this stance.

The Ethics Commission holds that the advertising value to a business of a sign indicating its sponsorship and the prestige to an individual of being publicly recognized as a supporter is valuable consideration. The Commission will not speculate whether such a use of a business's advertising budget or individuals of their private resources is wise or prudent. The advertisements and recognition would be reasonably visible to the public, therefore, the proposed transactions would constitute an exchange of value. Accordingly, the officials or employees of the Authority may directly contact businesses and individuals and seek funds to establish an emergency fund to cover potential budgetary shortfalls in exchange for providing signs noting their sponsorship 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 a commercial endorsement of a business's products or services.

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.

Terry L. Walker, Acting Chairperson
West Virginia Ethics Commission