ADVISORY OPINION 2015-07

Issued on May 7, 2015, by

THE WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A State College asks whether it may use public funds to buy meals for its employees at events held by a local chamber of commerce.

FACTS RELIED UPON BY THE COMMISSION

The Requester states the following:

> The College has employed certain individuals to reach out to businesses in the community to forge relationships that are beneficial to the College and our students. A few examples of benefits resulting from these contacts include establishing student internships and job placement opportunities, creating contracted trainings with local businesses to enhance workforce skillsets, and identifying potential Learn and Earn partnerships - Tomblin's Education-To-Work program. These activities directly support the College's mission:
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> > [The College] is dedicated to providing a diverse student population with collaborative programs and supportive services to improve the quality of life and promotes economic development in its service area. Our quality academic programs are learner-centered and focus on career entry, university transfer, developmental education, and workforce development.
>
> The College firmly believes that being active and present within the business community is essential to accomplishing its mission. It maintains its membership with the local chambers of commerce and expects to utilize the opportunities afforded from these memberships to benefit the College. Participation in these events is highly encouraged and directly correlates to the job functions and performance measures as described in position descriptions of the previously-mentioned individuals.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W.Va. Code § 6B-2-5(b) 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.

West Virginia Code §6B-1-2(a) states, in part:

> The Legislature hereby finds that the holding of a public office or public employment is a public trust ... Public officials and public employees who exercise the powers of their office or employment for personal gain beyond the lawful emoluments of their position or who seek to benefit narrow economic or political interests at the expense of the public at large undermine public confidence in the integrity of a democratic government.

ADVISORY OPINION

The Ethics Act generally prohibits public agencies from using public funds to purchase meals for employees. The Ethics Commission previously has found meals to be beyond the lawful emoluments of a public servant's position in violation of W.Va. Code § 6B-2-5(b). *See* Advisory Opinion 2012-50.

In Advisory Opinions 2000-15 and 2001-25, the Commission held that a county commission and a board of education, respectively, could use public funds to pay for an employee's membership to a chamber of commerce since the membership was justified by a counterbalancing public interest. The Commission clearly held in both opinions that the agencies could not use public funds to pay for monthly luncheons and dinners at the chamber of commerce events during which speakers would address issues of interest to the agencies.

More recently, the Commission affirmed these holdings in Advisory Opinion 2011-05, and found that a university could use public funds to pay dues for its president to join a local Rotary Club because "the business relationships developed with the local business community will enhance opportunities for students through internships and employment

opportunities."[1] However, the Commission denied the president's meals associated with attending any Rotary meeting or function.

The Requester here asks the Commission to reexamine its holdings in the above opinions to allow it to use public funds to purchase meals for its employees when they are attending events in their public capacity on public business at chamber of commerce events. Although the Commission has generally denied the use of public funds to purchase meals for employees, including meals served at chamber of commerce events, the Commission has permitted agencies to purchase meals for employees in limited circumstances when the agency, rather than the employee, receives the primary benefit of the expenditure. *See* Advisory Opinions, 2001-01, 2001-18, 2012-27, and 2012-50.

The Commission finds that most meals at chamber of commerce events would personally benefit the employee more than the college.

Therefore, the Commission affirms its holdings in the Advisory Opinions 2000-15, 2001-25 and 2011-05 and holds that the Requester may not use public funds to buy meals for its employees at events held by a local chamber of commerce.

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 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 § 68-1-1, et seq., and does not purport to interpret other laws or rules. In accordance with W* Va. *Code § 68-2-2, this opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended, revoked or the law is changed.*

/s/ R. Kemp Morton, Chairman
Kemp Morton, Chairman

[1] Further, the Commission prohibited the university from paying for his spouse's membership and stated that "the President's spouse would personally benefit from the Rotary membership more than the institution would. Therefore, the expenditure of public funds to purchase the spouse's membership would violate the Ethics Act."