

Advisory Opinion 2024-04

Issued on July 11, 2024, by

The West Virginia Ethics Commission

Opinion Sought

A **State Employee**, who is also an officer of a professional association, asks whether public employees may sell tickets, sponsorships, and advertisements to vendors and others for an event to raise funds for scholarships for its members.

Facts Relied Upon by the Commission

The Requester is employed by the state as a procurement officer. She is also an officer of a non-profit Association that is composed solely of governmental procurement employees. The Association's mission is to develop, support, and promote the public procurement profession through educational and research programs, professional support, technical services, and advocacy initiatives that benefit members and other important stakeholders. Some state agencies pay the membership dues for their employees to support their professional development in the procurement field.

The Association is considering hosting a dinner theater event to raise funds for scholarships for its members to use for continuing education and professional certifications. The Association plans to sell tickets to the public for the event, which would include a full meal and a theater performance. The tickets have historically been sold for \$25.

The Association may sell sponsorships and advertisements for the event. The paid advertisements would be in its written program, handouts, and signs at the event. The Association would not endorse any sponsor in its materials or at the event. The Association would establish sponsorship levels for advertising sizes and types. The public employees involved in planning and hosting the dinner theater event would volunteer their services on their own time and not use any public resources.

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(c)(1) provides, 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.

W. Va. Code R. § 158-7-6 (2008) provides, in relevant part:

6.1. Public officials and public employees may solicit gifts for a charitable purpose when there is no resulting direct pecuniary benefit to the public official or public employee or an immediate family member.

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

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

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Soliciting donations

The Ethics Act and related Legislative Rule prohibit a public servant from soliciting gifts unless the gift is for a charitable purpose with no direct pecuniary benefit conferred upon the official, employee, or his or her immediate family. See W. Va. Code § 6B-2-5(c) and W. Va. Code R. § 158-7-6 (2008). In [Advisory Opinion 1996-36](#), the Ethics Commission held that public employee members of a professional association may not solicit money to support the educational activities of its members.¹ The Commission found that soliciting donations to help pay for an educational conference, including door prizes, was prohibited.²

The Commission again held, in [Advisory Opinion 2015-22](#), that a state agency's staff may not solicit donations to fund an association's annual conference because it did not constitute a "charitable purpose" under the Ethics Act. This Opinion relied on [Advisory Opinions 1997-25](#) and [2000-29](#) in which the Commission also held that the Act prohibits public officials and employees from soliciting donations to help pay for an association's conference designed to educate its members.

¹ The Commission also made clear that while non-profit associations themselves are not subject to the Ethics Act, public employees who are in a professional association are still subject to the Act.

² This holding is consistent with the Commission's Guideline on [Door Prizes, Gifts and Giveaways at Conferences \(2020\)](#).

The Commission holds that public servants may not solicit donations for the dinner theater event without offering something of value in exchange.

Selling tickets as fund-raising

The Commission will now consider whether selling tickets to the dinner theater to the public is permissible under the Ethics Act. W. Va. Code R. § 158-7-6.8 (2008) provides that: “[f]und-raising activities based on an exchange of value are not gift solicitations and are permissible.” The Commission considers a gift “to be something given voluntarily and without compensation - something given without consideration in return.” [Advisory Opinion 1996-36](#). The Commission also stated that, “the sale of raffle tickets, [food and other consumer goods] which offer a chance at a valuable prize is not a solicitation of a gift. This is true, even if buyers may be motivated by a desire to benefit the sponsor, provided the raffle is legitimate and not a mere sham to disguise the solicitation of gifts.”

In [Advisory Opinion 2018-01](#), the Ethics Commission held that county commissioners may contact local businesses and individuals to sell them sponsorships for park benches. Since “the sponsors would be recognized by a plaque or marker on the benches which would be located throughout the park for the use and enjoyment of the public,” the sale was not a gift solicitation. It was a fund-raising activity based upon an exchange of value - either commercial or personal.³ Here, the Commission finds that selling tickets to the dinner theater event in exchange for a dinner and performance is a fund-raising activity and not the solicitation for a gift.

The Commission holds that the Requester and other public employees may sell tickets to the dinner theater event on their own time and the Association may use the proceeds to pay for scholarships for continuing education and professional certifications for its members.⁴ The sales solicitations for the tickets must be made in a fair and even-handed manner. Vendors and other persons may not be coerced into buying tickets to the dinner theater and may not receive unlawful or political favoritism in return for purchasing them.⁵

Selling advertising - exchange of value

The next question is whether public employees may sell advertising or sponsorships for the event. In [Advisory Opinion 1995-18](#), the Commission held that a state agency may solicit advertising sales from agency vendors and persons regulated by the agency to help defray the costs of an educational conference. The advertising included space in a conference bulletin or program and vendor exhibition space at the meeting site. The Commission held that selling advertising does not constitute soliciting a gift, “unless the

³ The Commission qualified this holding with, “Potential sponsors may not be coerced into buying a sponsorship and may not receive unlawful or political favoritism in return for purchasing a sponsorship.”

⁴ It does not violate the Ethics Act for public employees to use a de minimis amount of state resources and time to sell tickets.

⁵ As an event ticket constitutes a thing of value, the provisions in the Legislative Rule that limit the manner of solicitation do not apply. See [W. Va. Code R. § 158-7-6.9 \(2008\)](#).

advertising charge is merely a contribution in disguise or the advertising, on its face, renders no real benefit to the advertiser. A commercially defensible sale of advertising or exhibit space with real commercial value does not constitute a prohibited gift solicitation.”

In [Advisory Opinion 1995-18](#), the Commission concluded:

The solicitation of proper conference advertising by agency personnel would not be a violation **if** the proceeds were used only to reduce the cost of presenting the core element of an official conference, the registration fee for which is paid by the agency, **and** the process were not used directly or indirectly to provide or expand social events or other personal benefits such as meals, entertainment or gifts to those attending the conference.

Likewise, in [Advisory Opinion 2014-15](#), the Commission found that selling advertisement banners and sidebars on a state agency’s website to defray the cost of a wellness program was not a solicitation for donations. The Commission further stated that the website may not include endorsements of the products or services being advertised.

In [Advisory Opinion 2018-01](#), the Ethics Commission expressly held that county commissioners may contact local businesses and individuals to sell them sponsorships for park benches. Similarly, here, the Association members who are public employees may directly contact vendors to sell sponsorships but may not coerce the vendors. Public employees and public officials must also comply with their agency’s rules.

The Ethics Commission holds that the Association members may sell advertising or sponsorships to raise funds to help defray the costs of hosting the dinner theater event when the proceeds from the event will be used for scholarships for continuing education opportunities and professional certifications for its members.⁶

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 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

⁶ As an event ticket constitutes a thing of value, the provisions in the Legislative Rule that limit the manner of solicitation do not apply. See [W. Va. Code R. § 158-7-6.9 \(2008\)](#).