

ADVISORY OPINION NO. 2008-07

Issued On July 10, 2008 By The WEST

VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Town Council** asks whether it may give its employees free use of the Town's swimming pool.

FACTS RELIED UPON BY THE COMMISSION

A Town owns and operates a swimming pool. The Town Council wants to allow its employees to use the swimming pool free of charge. The Town feels that giving the employees this benefit will help boost employee morale and help compensate for the fact that the Town is unable to give its employees significant wage increases.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(b) reads in relevant 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

Municipalities may establish the compensation, including fringe benefits, of its employees. The Town asks whether the fringe benefit of free use of the Town's swimming pool is permissible or if it constitutes the prohibited use of office for private gain. Conferring this fringe benefit upon Town employees would only be prohibited if there is no rational basis for this management decision.

In A.O. 2008-05, the Ethics Commission recognized that "Allowing limited [recreational] facility use in a manner that does not detract or diminish the service PRC provides to its paying customers provides benefits to its employees and boosts morale at no additional cost to the County." In this case the Requester has stated that "giving the employees this benefit will help boost employee morale and help compensate for the fact that the Town is unable to give its employees significant wage increases." The Ethics Commission finds that this stated purpose for allowing free use of the swimming pool is rationally related to the legitimate government purpose of boosting employee morale.

This policy provides an additional fringe benefit to the employees at limited cost to the Town or taxpayers.

The Ethics Commission finds that the Requester may allow its employees free use of the swimming pool with the following limitations. First, the employee's use of the pool may not interfere with the public's use and enjoyment of the pool. Second, the privilege of free use of the pool may only be extended to the Town's employees, not elected Council Members and other members of its governing body whose compensation is statutorily established by Town ordinance. Last, the Town should consult with its attorney to obtain a legal opinion as to whether the free use of the swimming pool is a taxable fringe benefit.

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 § 68-2-3, this opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is ended or revoked, or the law is changed.

/s/ Larry L. Rowe, Acting Chair
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