

ADVISORY OPINION NO. 2004-05

Issued On April 1, 2004 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Volunteer Fire Department** asks if it may accept free use of an emergency vehicle containing commercial advertising.

FACTS RELIED UPON BY THE COMMISSION

A Volunteer Fire Department (VFD) seeks to participate in a program offered by an advertising company which provides vehicles for use by government agencies that agree to operate these advertisement-bearing vehicles within their communities.

The VFD, with the approval of the municipality in which it operates, will "buy" the vehicle for \$1, use it for three years, and "resell" it to the company for \$1. The VFD receives funding from a county fire fee and the insurance commission, otherwise relying on voluntary contributions to operate.

The contract between the parties precludes advertising "which promotes tobacco, alcohol, firearms, gaming, or any other advertising which could be construed as offensive to the public." The VFD is not involved in soliciting or selecting advertisers.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

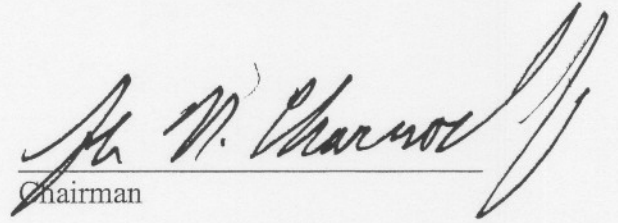
WV Code 6B-2-5(b) *Use of public office for private gain.*, provides in part that ... A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.

ADVISORY OPINION

The Commission addressed similar proposals in Advisory Opinions 2003-03 and 2003-09, concluding that advertising on county or municipal police and emergency vehicles could involve a use of public office for private gain.

Unlike the government agencies addressed in these earlier opinions, a VFD operates as a voluntary, community-based organization without significant governmental authority. It is unlikely that the public would perceive advertising on a VFD-operated vehicle as an official government endorsement of the products advertised, anymore than billboards on a public stadium would be viewed as an official endorsement. The Commission is also aware that VFDs generally have no independent authority to impose mandatory fees or taxes to fund their operations.

Therefore, the Commission finds that VFD operations are distinguishable, and the requester may proceed with its effort to obtain an emergency vehicle.


Chairman