

Advisory Opinion 2023-02

Issued on March 2, 2023, by

The West Virginia Ethics Commission

Opinion Sought

A **Regional Housing Authority Executive Director** asks whether she may accept a stipend from a Home Loan Bank for serving on its Affordable Housing Advisory Council.

Facts Relied Upon by the Commission

The Requester is employed full-time as the Executive Director of a Regional Housing Authority (“Housing Authority”), which helps low-income residents and the homeless in the community find affordable housing.

A Federal Home Loan Bank (“Bank”) that does business in West Virginia and other nearby states has appointed the Requester to serve a three-year term on its Affordable Housing Advisory Council (“Advisory Council”). The Requester describes the Bank as a “bank for banks” for its members. The Housing Authority is not a member. The Bank’s members include banks, credit unions, and insurance companies, for example.¹

Although the Housing Authority is not a member of the Bank, the Housing Authority may apply for grant funds from the Bank’s Affordable Housing Program (AHP) for housing development or rehabilitation projects. The Requester’s Housing Authority has been a recipient of an AHP award in the past, but it has not applied for an award since 2018.

The Bank appoints two Advisory Council representatives from each state it services, and the Requester was selected as a representative from West Virginia. The Advisory Council’s recommendations may impact the overall policy of the Bank’s grant program that addresses affordable housing needs and homelessness. However, the Advisory Council does not select the organizations that will receive the AHP grants.

The Requester asserts that the Bank does not currently have a matter before the Housing Authority, and that neither she nor her subordinates has ever taken any regulatory action against the Bank. The Bank provides no regular operating funds or loans to the Housing Authority.

The Housing Authority, however, may apply for grant funds in the future from the Bank’s AHP for development or rehabilitation for affordable housing.²

¹ The Bank’s website states: “Founded as a cooperative by Congress in 1932, we assure the flow of credit to our members and support their housing finance and community lending businesses. Our products and services enhance our membership’s ability to conduct business and vitalize their communities.”

² The Requester explained that the Housing Authority could indirectly receive funding from the Bank through another program called Homes For Good. The funds would be awarded by the Bank to the West Virginia Housing Development Fund to provide a source of funding to the designated entities working to

The Advisory Council meets four times a year for meetings that span two days. Three of the meetings are in Pennsylvania, and one is held in different states located within the Bank's service area. The Bank pays its Advisory Board members \$1,000 for attending each two-day meeting in person and \$250 for attending remotely. The Bank reimburses the Advisory Council members for travel-related expenses.

The Requester states that the Advisory Council is instrumental in helping shape the Bank's housing and community development policy. The Requester states that her service on the Advisory Council provides her an opportunity to help influence favorable affordable housing programs and policy in West Virginia and to network with others in her field of work. Her job duties as Executive Director do not include serving on the Advisory Council. The Housing Authority's Board of Directors has approved the Requester holding a seat on the Advisory Council. The Board has not asked her to take paid or unpaid annual leave to attend the Council meetings, as it will benefit the mission of the Housing Authority to promote affordable housing opportunities and alleviate homelessness in its area.

Code Provisions Relied Upon by the Commission

W. Va. Code § 6B-2-5(b) provides, in part:

(1) 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. . . .

W. Va. Code § 6B-2-5(c) provides, in part:

(1) A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose. . . . No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind with his or her agency;

(B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his or her official duties.

address homelessness in West Virginia. These entities are called "continuums of care," and there are four in West Virginia. The continuums of care may subgrant funds to the Housing Authority for further programming to prevent homelessness. A potential example of a program would be a landlord repair program whereby the Housing Authority would pass these funds on to private landlords to use for repair costs due to tenants who cause damage above normal wear and tear to a unit. The Housing Authority would have to verify the damages and process the paperwork and work with the landlords to get receipts for supplies and repairs. For purposes of W. Va. Code § 6B-2-5(c)(1)(A) and W. Va. Code § 6B-2-5(h)(1), the Commission does not consider the Bank to have a matter before the Housing Authority or doing business with it under this arrangement, through the Homes for Good, because the relationship between the Bank and the Housing Authority is too removed.

W. Va. Code § 6B-2-5(h) provides, in part:

(1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to purchase, sell or lease real or personal property to or from any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding 12 months; or

(B) Has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working, or

(C) Is a vendor to the agency where the official serves or public employee is employed and the official or public employee, or a subordinate of the official or public employee, exercises authority or control over a public contract with such vendor, including, but not limited to: (i) Drafting bid specifications or requests for proposals; (ii) Recommending selection of the vendor; (iii) Conducting inspections or investigations; (iv) Approving the method or manner of payment to the vendor; (v) Providing legal or technical guidance on the formation, implementation or execution of the contract; or (vi) Taking other nonministerial action which may affect the financial interests of the vendor. . . .

(6) A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public job responsibilities.

Advisory Opinion

Prohibited Employment

The Requester asks whether she may accept the stipend offered by the Bank to the members of the Advisory Council to attend its quarterly meetings. The Ethics Act contains a provision that prohibits a full-time public employee or official from being employed by certain categories of people and entities. W. Va. Code § 6B-2-5(h)(1)(A)-(C).³ The Bank does not currently fall under any of these categories. It does not currently have a matter before the Requester or her subordinates at the Housing Authority. Further, neither the Requester nor her subordinates have ever had a matter involving the Bank on which they have taken regulatory action. Finally, the Bank is not a vendor of the Housing Authority.

The Requester anticipates that the Housing Authority's relationship with the Bank may change, however, in the future. For example, the Housing Authority may apply for grant funds from the Bank's AHP. Although the Bank's Affordable Housing Advisory Council is not involved in selecting the recipients of such grants, the Bank would "have a matter"

³ The Requester states that she would receive an IRS W-2 tax form from the Bank. Both W-2 employees and independent contractors are "employed" for purposes of this provision. W. Va. Code § 6B-2-5(h)(2).

before the Housing Authority for purposes of W. Va. Code § 6B-2-5(h)(1)(B) and (C) if the Bank grants the AHP funds to the Housing Authority. This finding is consistent with [Advisory Opinion 2019-28](#), holding that a sheriff may not seek to sell or lease property to persons who currently have a matter before the sheriff's office, such as persons under investigation by the sheriff's office, delinquent in paying county taxes, or subject to an outstanding warrant.

The Commission finds that W. Va. Code § 6B-2-5(h)(1) does not prohibit the Requester from accepting the stipend and payment of travel expenses offered by the Bank for her service on its Affordable Housing Advisory Council, except during time periods when the Housing Authority is applying for or administering a grant from the Bank.

When the Housing Authority is applying for or administering a grant from the Bank, the Requester may, however, accept the full amount of the stipend from the Bank and donate it to the Housing Authority.⁴ In [Advisory Opinion 2022-10](#), the Commission allowed a county assessor to donate his stipend from a vendor and donate it to his public office. See [Advisory Opinion 1990-191](#) (holding that donating a charitable contribution to a charitable organization in the name of a public official, in lieu of an honorarium, is permissible since this would not result in pecuniary benefit to the official).

Accepting Payment of Travel Expenses from Bank when Stipend is Prohibited

The next issue is, during times when the Housing Authority is applying for or administering a grant from the Bank, whether the Requester would be prohibited from accepting payment from the Bank for her travel expenses related to the Advisory Council meetings. This issue involves a different provision of the Ethics Act, W. Va. Code § 6B-2-5(c), which prohibits public servants from accepting certain gifts. The gift provision of the Act prohibits a public servant from accepting more than a nominal gift from a "person" that is "doing or seeking to do business of any kind with his or her agency." The Bank would qualify as such a person during these times. W. Va. Code § 6B-2-5(c)(1)(A).

However, an exception exists if there is an overriding public benefit that would result from the Requester's attendance at the Bank's Advisory Council meetings. In [Advisory Opinion 2000-03](#), the Commission found that a state regulatory board member may not accept travel reimbursement for a non-essential trip to a remote site from an association that had a matter before the board due to lack of overriding public benefit.⁵ In making its decision, the Commission stated: "If a public servant is to qualify for this exemption

⁴ The Ethics Commission has no authority to advise the Requester of any tax implications that may result from such a donation.

⁵ This finding is consistent with [Advisory Opinion 2022-10](#), in which the Commission, in applying a test applicable to accepting payment of travel expenses to a conference, held that a county assessor who was not permitted to accept compensation for his employment services from a vendor under W. Va. Code § 6B-2-5(h)(1), was permitted to accept funds to cover his travel expenses to a conference because the conference would increase his job knowledge and skill, which would significantly benefit the assessor's office and the public.

and accept the payment of travel expenses by an interested person, it must appear that the benefit offered is really a gift to the public servant's agency. The expenses must be for official travel from which there is an overriding public benefit which legitimizes any incidental benefit the public servant receives.”⁶

Here, the Requester states that her service on the Advisory Council provides her an opportunity to help influence favorable affordable housing programs and policy in West Virginia and to network with others in her field of work. Although her job duties as Executive Director do not include serving on the Advisory Council, the Housing Authority's Board of Directors has approved the Requester holding a seat on the Advisory Council. The Board has not asked her to take paid or unpaid annual leave to attend the Council meetings, as it will benefit the mission of the Housing Authority to address affordable housing needs and alleviate homelessness in its area.

The Commission finds that the Housing Authority and the public would benefit from the Requester's attendance at the Bank's Advisory Council meeting. Therefore, the Requester may accept payment from the Bank for her travel expenses even when the stipend is prohibited.

Payment of Salary from the Housing Authority

The next issue is whether, during times when she is prohibited from accepting the stipend from the Bank, the Requester may attend the Advisory Council meetings, either in person or remotely, and accept her normal working salary without having to take annual leave. This issue involves yet another provision in the Ethics Act, the private gain provision, at W. Va. Code § 6B-2-5(b). The Ethics Act permits the expenditure of public funds when there is a legitimate government purpose for the expenditure.⁷ The Ethics Commission has held that an “expenditure. . . may constitute the unlawful use of [public] office for private gain if the overriding benefit is to the public official or employee as opposed to the agency or public.” [Advisory Opinion 2018-03](#).

In this case, the Housing Authority's Board of Directors has approved the Requester holding a seat on the Advisory Council. The Board has not asked her to take paid or unpaid annual leave to attend the Council meetings, as it will benefit the mission of the Housing Authority to promote affordable housing and alleviate homelessness in its area.

The Commission finds that the Housing Authority would benefit from the Requester's attendance at the Bank's Advisory Council meeting. Therefore, she may accept her normal working salary without having to take annual leave during times that she attends Advisory Council meetings but may not accept the stipend from the Bank.

⁶ Arguably the payment of reasonable travel expenses by the Bank for the Requester's travel to Advisory Council meetings is not a gift because the Requester is incurring the expenses due to her Advisory Council duties. Hence, the payment of travel expenses is not gratuitous.

⁷ [Advisory Opinions 2020-04](#), [2018-07](#), and [2012-20](#).

Double Compensation Prohibited

If the Requester accepts the stipend and payment of travel expenses for her Advisory Board services, as authorized during times the Bank does not have a matter before the Housing Authority, she must take paid or unpaid annual leave from her job as the Executive Director of the Housing Authority.

Private Compensation for Performing Public Duties Prohibited

The final provision of the Act to consider is W. Va. Code § 6B-2-5(h)(6), which restricts public officials and employees, like the Requester, from receiving private compensation for performing services that they are required to provide as part of their public job duties. The Ethics Commission held, in [Advisory Opinion 2015-03](#), that W. Va. Code § 6B-2-5(h)(6) did not prohibit a state employee from conducting private safety classes for persons in an industry that was regulated by his agency but not by him or a subordinate. The Commission held that it was permissible for the public employee to provide private safety classes because, while his public job title was “safety instructor,” his private business would not “offer information or services which he is required to provide as part of his public job responsibilities.” In the instant situation, the Executive Director’s job duties do not include serving on the Bank’s Affordable Housing Advisory Council. Therefore, by accepting the stipend, she would not be accepting private compensation for performing her public job duties.

Therefore, the Ethics Commission finds that W. Va. Code § 6B-2-5(h)(6) does not prohibit the Requester from accepting the stipend and payment of travel expenses offered by the Bank for her service on its Advisory Council.

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