

Advisory Opinion 2023-05

Issued on June 1, 2023, by

The West Virginia Ethics Commission

Opinion Sought

A **Compliance Officer** for a State Agency asks under what circumstances the State Agency may give cultural or sporting event tickets, obtained by the agency per the terms of advertising and sponsorship contracts, to public officials, public employees, friends, or family members.

Facts Relied Upon by the Commission

The State Agency has a statutory duty to market and sell a product. The State Agency markets its product in various ways, including purchasing advertising and sponsorships for cultural and sporting events.

At times, the State Agency receives an allotted number of tickets to an event it sponsors pursuant to the terms of the advertising or sponsorship contract. The tickets are not a gift from the seller but a thing of value provided to public and private sector entities as legal consideration for the advertising or sponsorship contract. For example, the State Agency may sponsor a hospitality tent at an event, and the contract terms require the event holder to provide event tickets to its sponsors, including the State Agency.

The State Agency normally has its employees work at the events that it sponsors and uses some of the tickets provided under the sponsorship contracts for its employees and officials to attend the event to perform job-related duties. For example, if the State Agency has a hospitality tent, then the State Agency requires some of its employees and officials to be present at the tent to interact with customers. The employees and officials working the event wear apparel with the Agency logo.

The fair market value of tickets provided to the State Agency under the contracts varies based upon the nature of the events which include events such as college sporting events, semi-pro sporting events, and concerts. The fair market value of the tickets varies based upon the event: a baseball game ticket may be \$11 while a concert ticket may be \$200.

The Requester states that, at times, some of its marketing staff and executives keep and use tickets for themselves or give them to friends and family members. The Agency documents who receives the tickets but does not have a policy governing the distribution and use of tickets. The Requester is seeking guidance on permissible uses of the tickets.

Code Provisions Relied Upon by the Commission

W. Va. Code § 6B-1-3(h)

“Person” means an individual, corporation, business entity, labor union, association, firm, partnership, limited partnership, committee, club, or other organization or group of persons, irrespective of the denomination given such organization or group.

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. . . . 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) 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.

Advisory Opinion

Overview of General Rules

The State Agency may accept tickets from the seller provided to the Agency under the terms of advertising and sponsorship contracts if the tickets are a contractual benefit provided to the State Agency under the same terms offered to other private and public sector entities that purchase the advertising or sponsorships. Under these conditions, the tickets are not gifts to the Agency but legal consideration for the contract. See [Advisory Opinion 2017-07](#) (discussing that contractual incentives offered to public and private sector customers are not gratuitous, and are, therefore, not gifts under the Ethics Act).¹

¹ In Advisory Opinion 2017-07, the Commission ruled that a discounted program provided to all of an agency’s employees under an agency contract was not a prohibited gift because it was a business product available to all of the business’s commercial and government customers under the same terms.

The Ethics Commission finds that the State Agency may accept tickets to cultural or sporting events provided to it pursuant to the terms of an advertising or sponsorship contract.

The tickets provided to the State Agency pursuant to the terms of an advertising or sponsorship contract become the property of the Agency. Hence, the tickets must be used for a public purpose.² Providing tickets to the State Agency's customers and retailers serves a public purpose because it furthers the Agency's mission of promoting the sales of its products. The Requester, however, has more specific questions about other permissible uses, and her questions will be answered separately.

May the State Agency provide tickets to its public officials or public employees that are working for the Agency at the event or have a ceremonial role?

In [Advisory Opinion 1992-41](#), the Ethics Commission held that board of education members may be given free admission by the county to sporting events held at a county stadium if attendance at the sporting events is considered part of their job responsibilities. In [Advisory Opinion 1990-187](#), the Ethics Commission held that board of education members may accept complimentary passes to athletic events from the State Secondary Schools Activities Commission because supervising and overseeing the events was part of their official job responsibilities.

Based on Advisory Opinions 1992-41 and 1990-187, the Ethics Commission finds that the State Agency may use the event tickets for its own public officials or public employees to work at the event. The Commission also finds that having a ceremonial role at the event, e.g., handing out a trophy, constitutes working at the event if the ceremonial role relates to the Agency's goal of marketing its products.

May the State Agency give event tickets to its employees for their personal use if they are not working at the event?

Generally, a public employer may not gratuitously give event tickets or other public resources to its employees or other persons who are not lawfully entitled to them. There is a limited exception however in the Ethics Commission's Public Employee Recognition and Retirement Guideline³, which allows the use of public resources to recognize public employees. The Ethics Commission has previously ruled that contractual benefits obtained by a public agency may be used to recognize public employees under the same rules governing employee recognition events under the Ethics Commission's Public Employee Recognition and Retirement Guideline. Specifically, in [Advisory Opinion 2013-17](#), the Commission ruled that a public agency director may redeem reward points accumulated through the agency's credit card, and give subordinate employees the benefit thereof, so long as the expenditure on any one

² The Ethics Commission discussed this rule in [Advisory Opinion 2019-11](#) in which it analyzed permissible uses for donated items.

³ Issued May 7, 2020.

employee does not exceed the limits in the Guideline, e.g., \$100, and the total amount for the fiscal year does not exceed the sum of \$25 per employee.

The Ethics Commission finds that the State Agency may give the event tickets to its employees who are not working at the event for their personal use if the tickets are used to recognize employees in accordance with the Ethics Commission's Public Employee Recognition and Retirement Guideline rules.

May the State Agency give the event tickets to public officials and public employees in other agencies?

The Ethics Commission finds that the same rules governing the use of event tickets by the State Agency for its own public officials and employees govern the use of tickets by public officials and employees in other agencies.

May the State Agency give the event tickets to friends or family members?

As discussed above, a public agency may not use public funds or resources for the unlawful gain of another, including friends or family members. The Requester does not present a specific factual scenario for the Ethics Commission to consider. The Commission, therefore, provides the following general guidance on this issue.

There may be circumstances for which it is normal and customary for a public official attending an event to have a friend or family member to accompany him or her. One example is where there is an after-hours baseball game or concert to which the State Agency has invited vendors or customers to thank them for their business, and the State Agency determines that to promote vendor or customer relations, the Agency Director or State Agency employees should be present at an event to interact with the vendors or customers as part of its marketing efforts. It is the opinion of the Ethics Commission that under this scenario, it would not violate the Ethics Act for the State Agency to provide public officials or public employees designated to interact with vendors and customers an extra ticket for a guest.

This finding is consistent with the spirit and intent of the gift restrictions and exceptions in the Ethics Act and related Legislative Rule that allow a public official or public employee to accept a ticket for a guest to a speaking engagement or sporting event.⁴ W. Va. Code § 6B-2-5(c) and W. Va. Code § 158-7-9 (2008). The Ethics Commission finds that the gift rule exceptions are applicable to determining which acts constitute "[t]he performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services" under the private gain provisions in the Act. W. Va. Code § 6B-2-5(b).

The Ethics Commission finds that the State Agency may not gratuitously give tickets to friends and family members. The State Agency may provide a public official or public employee who is working at the event a ticket for a guest if the

⁴ The gift rules permit a public official to accept an extra ticket to a sporting event only when he or she has a ceremonial role.

State Agency finds there is an overriding public benefit in allowing the public official or public employee to bring a guest due to the public official or public employee's job duties at the event.

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