ADVISORY OPINION NO. 2013-17

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WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Public Employee** of a Regional Government Agency asks under what circumstances, if any, a public servant may redeem rewards points earned through the use of the agency's credit card, for the benefit of agency employees.

FACTS RELIED UPON BY THE COMMISSION

The Requester is the Executive Director of a multi-county Regional Government Agency. She has been unable to obtain a State of West Virginia Purchasing Card through the Auditor's Office for her agency; instead, like some other government agencies, the agency acquired a bank issued credit card.

The particular card is a rewards card whereby points accrue with the agency's purchases. Points may be redeemed for merchandise, gift cards, and for other purposes. The Requester asks whether it is permissible to redeem the points for the benefit of agency employees in the form of gift cards and/or merchandise to reward and recognize their contribution to the agency.

The agency incurs no expense when points are redeemed.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W.Va. Code§ 6B-2-2(d) reads in relevant part:

> The Commission shall, in addition to its other duties:
>
> (2) Prepare and publish manuals and guides explaining the duties of individuals covered by this law; and giving instructions and public information materials to facilitate compliance with, and enforcement of, this act.

Indeed, on December 4, 2008 the Ethics Commission issued a Guideline, *Public Employee Recognition Events,* governing public employee recognition events. The Guideline reads in part:

> In order to provide uniform guidance as to what level of spending for this purpose

complies with the Ethics Act, the Ethics Commission hereby finds that the expenditure of public funds for all events to recognize employees does not violate the Ethics Act if an agency expends no more than $25.00 per employee per fiscal year. This money may be allocated between one or more events or activities which are held to recognize employees and promote employee morale. It may be used to purchase light refreshments, meals or mementos of appreciation.

The Guideline further reads:

> This guideline recognizes a spending threshold which the Ethics Commission has determined to be acceptable under the general limitations in the Ethics Act against use of public office for private gain. This guidance does not establish or confer any employee benefit. The head of an agency or its governing body must determine whether any such expenditure is consistent with fiscal responsibility and whether appropriated funds are authorized for this purpose.

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

> A public official or 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.

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In Advisory Opinion 2010-05, the Commission considered whether an agency could spend more than $25.00 per fiscal year to recognize certain employees for special achievements so long as the total expenditures did not exceed an amount equal to $25.00 multiplied by the total number of employees. The Commission reaffirmed its finding that expending a reasonable amount of public funds for employee recognition serves a public purpose and therefore does not violate the Ethics Act.

The Commission also reaffirmed its Guideline permitting public agencies to spend up to $25.00 per employee per fiscal year for employee recognition related events. Moreover, in Advisory Opinion 2010-05, the Commission held that if an agency allocates more than $25.00 to one or more employees, in lieu of spending up to $25.00 per employee per fiscal year, it does not violate the Ethics Act so long as: the expenditure on any one employee does not exceed $100.00 and the total amount expended for this purpose during the fiscal year does not exceed the sum total of $25.00 per employee.

The Guideline and related advisory opinion refer to the expenditure of public funds. In Advisory Opinion 2012-50, the Commission clarified the definition of public funds:

> There are limitations on the use of public funds. These same limitations apply regardless of whether the funds are general revenue funds, e.g.

> funds generated by State or local government through taxes; or special revenue funds, a term commonly used for funds generated through fees.

Here, rewards points accrue with agency purchases. But for the agency's performance of its customary duties, those rewards points would not exist. Thus, those rewards points are the equivalent of public funds, and the same limitations apply. *See also* Advisory Opinion 2010-18 wherein the Commission denied a City's request to give its officials free Sam's Club cards provided to the City as part of its membership package. The Commission reasoned, "Even if there is no additional charge to the City for these cards, still, there is a private benefit to the public servants and their families because a membership, purchased at taxpayer expense, is the source of the free cards."

Therefore, the Commission finds that, consistent with the Guideline and cited advisory opinions, the Requester may redeem reward points and give her subordinate employees the benefit thereof so long as the expenditure on any one employee does not exceed $100.00 and the total amount for the fiscal year does not exceed the sum total of $25.00 per employee. If the Requester elects to redeem rewards points to recognize employees, then the agency may not expend public funds for that purpose during the same fiscal year.

This advisory opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester should contact the 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, *et seq.* 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 other public agencies unless and until it is amended or revoked, or the law is changed.

/s/ R. Kemp Morton, Chairman
Kemp Morton, Chairman