

# Advisory Opinion 2023-07

Issued on July 6, 2023, by

The West Virginia Ethics Commission

## Opinion Sought

A **County School Superintendent** asks whether he may accept payment from a private company that manufactures electric school buses for food, lodging, and travel expenses related to his service as a panel member at the company's conference.

## Facts Relied Upon by the Commission

The county in which the Requester serves as Superintendent participated in a statewide electric school bus pilot program ("pilot program") commissioned by the Governor. Eighteen West Virginia counties participated in the pilot program which began in September 2022 and ended in May 2023. A private international company ("Manufacturer") designs, builds, and distributes electric medium and heavy-duty vehicles, including school buses. For the pilot program, the Manufacturer gave each participating county an electric school bus to use for 30 days, the equivalent of approximately six school weeks.

The Manufacturer opened a production plant in the Requester's county in September 2022. After the Requester's county participated in the pilot program, the county board of education purchased an electric school bus made by the Manufacturer. The bus was purchased from a dealership in West Virginia, not directly from the Manufacturer. The Requester's county also sends students to job shadow at the Manufacturer's plant in West Virginia.

In July 2023, the Manufacturer is hosting a conference in Reno, Nevada. According to the Manufacturer's website, the conference is "an event designed for school districts, school bus contractors and green energy professionals" who "will have the opportunity to hear from green experts, government officials, public utilities and manufacturers on the latest technologies and trends that can result in fuel savings, emissions reductions and lower cost of ownership."<sup>1</sup>

The Manufacturer has invited individuals involved in West Virginia's pilot program to participate in the conference, including the Requester, a county transportation director, and a school bus driver. The Requester was specifically asked to be a panel participant for a session on electric buses. He expects to speak about his county's experience using an electric school bus. The Manufacturer has offered to pay for the Requester's food, travel, and lodging expenses to facilitate his participation in the conference. The Requester will also attend other conference sessions. The Requester's participation on

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<sup>1</sup> GreenBus Summit, <https://stnexpo.com/west/green-bus-summit/> (last visited June 21, 2023).

the panel will require him to be out of the office for three days which include his travel days. He intends to use professional leave.

The Requester states that attending the conference will enable him to gather information from other sources to help him and the board of education assess, from an economic and operational standpoint, whether the county should purchase additional electric school buses. He also states that his attendance at other conference sessions will increase his general knowledge about school transportation. The Requester states that conference attendees will include individuals from around the country who have a wealth of knowledge about the school transportation industry, including specific issues facing his county and the rest of West Virginia. For example, the challenges of operating electric buses in mountainous areas and during cold weather.

Conference attendees will consist of individuals from the public and private sectors, and there will be attendees who are employed by school systems from other states.<sup>2</sup> The name of the session for which he is being asked to be a panelist is “Electric School Buses: User Experiences.” The session description states: “This moderated session of the electrification experiences at three school districts and the nation’s largest school bus contractor highlights the infrastructure, procurement and scaling challenges that the entire industry faces. Discussions will center on the impact the latest EPA emissions regulations that begin going into effect next year are already playing on the accelerated adoption of zero-emissions technology.”<sup>3</sup>

### **Provisions Relied Upon by the Commission**

W. Va. Code § 6B-2-5(b) states, 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 under this subsection. 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)(1) states, in relevant part:

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:

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<sup>2</sup> STN EXPO GreenBus Summit, <https://stnexpo.com/west/green-bus-summit/> (last visited, June 26, 2023).

<sup>3</sup> STN EXPO Agenda, <https://stnexpo.com/west/agenda/> (last visited, June 26, 2023).

- (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.

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

Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

....

(D) Reasonable expenses for food, travel, and lodging of the official or employee for a meeting at which the official or employee participates in a panel or has a speaking engagement. . . .

W. Va. Code R. § 158-6-2 (2022) states, in relevant part:

2.1. The following acts performed by a public official or public employee do not constitute an improper use of office for private gain:

- 2.1.1. Usual and customary duties associated with the office or position,
- 2.1.2. Services relating to the advancement of public policy goals, and,
- 2.1.3. Constituent services without compensation.

....

2.3. A public official or public employee may travel out-of-state to attend seminars or to inspect certain facilities or products on behalf of his or her public agency, provided that such activities are among the public official's or public employee's job responsibilities and there is a legitimate government reason for the travel. Such travel constitutes usual and customary duties associated with the office or position.

W. Va. Code R. § 158-7-5 (2008) states, in relevant part:

5.1. A public official or public employee may accept payment or reimbursement for reasonable expenses for him or herself and for one guest for food, travel and lodging incurred in attending a meeting at which he or she participates as a panel member or speaker, but may not accept payment or reimbursement for other expenses such as golf fees, carriage rides or health club fees unless these amenities are normally part of the standard hotel room charge and incidental to the use of the room.

5.2. Food and lodging expenses are “reasonable” if the expenses are limited to the usual and customary basic charges of the hotel and are comparable to those charged to other participants and hotel guests. Travel expenses are “reasonable” if the expenses are comparable to those ordinarily charged to other similar travelers.

### **Advisory Opinion**

The Ethics Act prohibits public servants from accepting, directly or indirectly, gifts from certain individuals and entities. Such an individual includes anyone who is doing or seeking to do business of any kind with a public servant’s agency, is engaged in activities which are regulated or controlled by a public servant’s agency, or has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of a public servant’s official duties. W. Va. Code § 6B-2-5(c)(1).

The Requester’s county purchased one of the Manufacturer’s electric buses from a West Virginia dealership. **The Ethics Commission finds, therefore, that the Manufacturer is doing or seeking to do business with the Requester’s public agency.**<sup>4</sup>

The Manufacturer has offered to pay for the Requester’s food, lodging, and travel expenses for him to attend and speak at the Manufacturer’s conference. The receipt of free food, lodging, and travel constitute the receipt gifts under the Act. See, e.g., [Advisory Opinion 2010-11](#) (finding that complimentary airline tickets constitute gifts). The Requester may, therefore, only accept these gifts from the Manufacturer if the gifts fall within one of the Act’s gift rule exceptions.

The Ethics Act expressly allows public officials to accept from interested parties “[r]easonable expenses for food, travel and lodging [for] the official or employee for a meeting at which the official or employee participates in a panel or has a speaking engagement . . . .” W. Va. Code § 6B-2-5(c)(2)(D); see also W. Va. Code R. § 158-6-5 (2022) (“A public official or public employee may accept payment or reimbursement for reasonable expenses for him or herself and for one guest for food, travel and lodging

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<sup>4</sup>Similarly, in [Advisory Opinion 2020-10](#), the Ethics Commission held that a private company that manufactured bulletproof vests used by the city was seeking to do business with the city.

incurred in attending a meeting at which he or she participates as a panel member or speaker . . . .”) The Requester’s participation as a panel member at the Manufacturer’s conference falls within this exception to the gift rule.

The Ethics Act also prohibits public servants from making commercial endorsements. See generally [Advisory Opinion 2015-17](#). The Requester does not intend to expressly endorse the Manufacturer’s buses. As a panel member, he will discuss his county’s experiences using the Manufacturer’s electric buses and other panel members will discuss their experiences. The panel will also discuss issues facing the industry and the impact of federal regulations. Conference participants will include persons from the public and private sectors with an interest in electric school buses, and there will be attendees who are employed by other school systems in the United States.

Based upon the facts presented, the Ethics Commission finds that the Respondent’s service as a panelist at a conference hosted by the Manufacturer of a product used by the Respondent’s agency does not constitute a prohibited endorsement so long as the Respondent does not expressly endorse the Manufacturer’s product.<sup>5</sup> This conclusion is consistent with the Ethics Commission’s holding in [Advisory Opinion 2017-20](#) which held that a reasonable person would not construe a police officer’s participating in a “coffee with cops” event as an endorsement of the restaurant where the event was being held. Further, in [Advisory Opinion 2013-06](#), the Commission reiterated that the endorsement restrictions do not bar public agencies from sharing information and opinions about vendors with other public agencies or persons.

**Therefore, the Ethics Commission holds that the Manufacturer may pay for the Requester’s reasonable food, lodging, and travel expenses related to the Requester’s service as a panel speaker at the Manufacturer’s conference.**

**The Requester does not have to use professional leave to travel to and attend the conference if the County Board of Education determines that the Requester’s attendance at the conference will provide an overriding public benefit to the County Board of Education. This holding is consistent with what the Ethics Commission held in [Advisory Opinion 2023-02](#).**

*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.*

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<sup>5</sup> In [Advisory Opinion 2012-06](#), the Ethics Commission analyzed whether a public official could accept travel expenses to serve as a speaker on a panel at an international government forum from a business that had a financial relationship with his state agency. In its analysis, the Commission stated, “From a practical standpoint, the attendees will know that the State of West Virginia uses the product offered by the State subcontractor.” The Ethics Commission held, however, that the public official could accept the travel expenses but could not expressly endorse the vendor.

*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