ADVISORY OPINION NO. 2013-38

Issued on August 1, 2013 By the

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Council** asks if it may use public funds for a meal during a dedication ceremony for its Public Safety Building.

FACTS RELIED UPON BY THE COMMISSION

A County Council plans to hold a dedication ceremony to celebrate the opening of the County's Public Safety Building. The County Council intends to invite all county employees, Members of the Legislature, the Governor, certain community leaders, and Sheriffs. The Requester expects approximately one hundred and fifty people will attend. According to the Requester, the general public will not be invited due to security concerns.

The County Council asks if it may spend $3,000.00 to $5,000.00 in public funds to purchase food from a local fast food restaurant.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code§ 6B-2-5(b)(1) reads in relevant part: A public official ... may not knowingly and intentionally use his ... office or the prestige of his ... office for his ... own private gain or that of another person.

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The basic concept of the Ethics Act is that public servants may not use their public positions for their own private gain or the private gain of others. The Act's Legislative findings explain that the Act is intended to prevent public servants from using their public positions "...for personal gain beyond the lawful emoluments of their position ... [or] ... to benefit narrow economic or political interests at the expense of the public at large..."

In Advisory Opinion 2012-27, the Commission authorized a State Licensing Board to purchase meals for itself and staff during long meetings. This ruling was based in part upon Internal Revenue Service guidelines which included as a requirement that the meal be furnished on the agency's premises. This Opinion also noted that the ruling does not extend to local government officials and agencies, citing Advisory Opinion 2001-18.

In Advisory Opinion 2001-01, the Commission found that a State Health Care Agency may provide free meals to agency personnel when authorized by legislation

In those situations, the Commission found that the individual private gain was counterbalanced by an overriding public benefit. The Commission has taken a strict view of overriding public benefit in past opinions. See, *e.g.,* Advisory Opinion 1999-28 where the Commission found that the Ethics Act prohibited a director of a Regional Educational Service Agency (RESA) from traveling to California to learn about software which some counties within the RESA use because the trip was not necessary to fulfill an existing agency need and the skill, knowledge, or information to be gained did not meet a clear immediate need of the agency. Similarly in Advisory Opinion 2001-04, the Commission found that a County Commission may not spend public funds for commemorative parties. The Commission stated "[t]he addition of dignitaries, contractors, vendors or select members of the public to the guest list does not legitimize the expenditure."

Here, the dedication of a public building does not, in itself, serve an overriding public purpose. This is especially true when the general public is excluded from the event. Further, the West Virginia Auditor's Office instructs governing bodies that they may not use public funds for meals or hospitality-related expenses when the general public is not invited.

Therefore, the Commission hereby finds that the Requester may not use public funds for a meal during a building dedication ceremony where the public is not invited.

The Commission notes that if the Requester invites the public to a dedication ceremony, such as a ribbon-cutting or other symbolic event, it may spend a reasonable amount of public funds for light refreshments. The Requester may still hold a closed, invitation-only tour of the facility based on its security concerns, so long as no additional public funds are spent.

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/ Jonathan E. Turak
Jonathan E. Turak, Acting Chairperson