ADVISORY OPINION NO. 2012-50

Issued On January 10, 2013 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Sheriff** asks whether he may use Concealed Weapons Funds to purchase meals for official meetings, and what other limitations apply to the use of such funds.

FACTS RELIED UPON BY THE COMMISSION

In West Virginia, sheriffs are statutorily charged with issuing concealed weapons permits and administering the Concealed Weapons License Administration Fund (Concealed Weapons Fund). W. Va. Code§ 61-7-4. Persons in West Virginia seeking to carry a concealed deadly weapon must obtain a permit from the sheriff.

The cost of the permit is seventy-five ($75.00). Fifteen dollars ($15.00) of the fee is deposited in the Courthouse Facilities Improvement Fund. The remainder is deposited in the Concealed Weapons Fund. This money is to be used to administer the permit program. The code further states "Any surplus in the fund on hand at the end of each fiscal year may be expended for other law-enforcement purposes or operating needs of the sheriff's office, as the sheriff may consider appropriate." W. Va. Code§ 61-7-4(c).

At times, sheriffs may have staff meetings or may meet with citizens or other public officials. The Requester asks whether Concealed Weapons Funds may be used to purchase meals for such meetings. The Requester further seeks guidance on what other limitations may apply to the use of Concealed Weapons Funds.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code§ 6B-2-5(b) reads 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.

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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.

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.

Historically, it appears that some public servants have mistakenly believed that special revenue funds do not constitute "public funds" as this money is generated by a service offered by a government entity. In turn, at times there is the misconception that public servants have more leeway in regard to the expenditure of these funds.

The Ethics Commission believes that this misconception is gradually being dispelled through the education of public servants through training sessions conducted by this office and other offices in State Government such as the State Auditor's Office. Heightened awareness has also been brought to this issue through the audit process wherein adverse findings are made if a public agency makes an unauthorized expenditure of public funds.

Regardless of the source of funds, all funds in the possession of a government entity are part of the "public coffers". Without exception, money in the public coffers may only be expended by a government entity for an authorized purpose.

In determining whether an expenditure of public funds violates the Ethics Act, the Commission relies upon the common law, West Virginia Code, Legislative Rules, Attorney General Opinions and opinion letters issued by the Auditor's Office to determine whether there is express or implied authority for the expenditure. The Commission has addressed what constitutes a permissible use of public funds for purposes of the Ethics Act in several opinions, including: **A.O. 2010-19** - the Commission ruled there was no authority for the expenditure of public funds to purchase funeral flowers; **A.O. 2011-05** - The Commission ruled that a public university may spend public funds to pay membership dues for the President, but not the President's spouse, to join the local Rotary club. Public funds may only be spent for President's membership dues (and one-time new member fee), not on meals or any other cost or fee associated with Rotary membership, such as contributions to a related philanthropic organization. **A.O. 2011-13** - the Commission ruled that public funds may not be spent to pay for health club or gym fees for public servants when the hotel does not provide free exercise facilities to lodgers; **A.O. 2011-19** - the Commission ruled that a State Agency may spend public funds to hire a registered lobbyist, to serve as a Legislative liaison; and, **A.O. 2012-20** - the Commission ruled that a public university may use public funds to purchase prizes or incentives, including gift cards, for wellness related competitions or promotions when prize recipients include University employees. Through its power to adopt guidelines, the Commission has also issued rulings relating to the permissible use of public funds for: employee recognition events, retirement events and for the purchase of nominal items as giveaways at conferences. These guidelines may be reviewed at the Commission's website, www.ethics.wv.gov.

Turning to the question before the Commission, the Requester seeks specific guidance on whether public funds may be used to purchase meals for "official meetings". The Commission is unaware of any State law which authorizes public agencies to purchase food for staff meetings. Instead, there are strict restrictions against public agencies using public funds for meals or beverages. The Commission has addressed what constitutes a permissible use of public funds for meals in four notable opinions: In Advisory Opinion 2001-01, the Commission ruled that it would not violate the Ethics Act for a Health Care Agency, "in accordance with appropriate legislative authority, to provide or pay for employee meals when those employees are required to work unscheduled emergency overtime."

In Advisory Opinion 2001-04, the Commission considered two questions from a county commissioner. Citing Advisory Opinions 96-50 and 2000-15, as to the first question, the Commission ruled that it would violate the Ethics Act "for the County Commission, or its subordinate agencies, to use public funds to pay for commemorative social events such as Christmas parties or annual dinners. The addition of dignitaries, contractors, vendors or select members of the public to the guest list does not legitimize the expenditure." Regarding the second question, the Commission wrote:

> It would not be a violation for public funds to be used to provide meals and beverages for the members of an agency's board at the regular meetings of the board, if the agency's enabling legislation authorizes it to provide meals to its board members, or to reimburse them for meal expenditures incurred while carrying out agency business.

In Advisory Opinion 2001-18, the Commission considered, *inter alia,* whether a County Ambulance Authority could use public funds to provide meals and refreshments as an inducement to encourage employees to voluntarily attend training sessions on their own time, without pay. Authority employees are required to maintain certification in emergency services. The Commission observed:

> Public servants do not ordinarily receive meals while working at their regular duty locations. Specific Legislative authority must exist to warrant giving such benefits at public expense. The members of an Authority's board who gave unauthorized benefits to themselves, or other Authority personnel, benefits which were "beyond the lawful emoluments of their position", could be found to have committed a material violation of the Ethics Act.

Nevertheless, the Commission ruled that such expenditures on meals and refreshments for training sessions for employees who attend on their own time, without pay, are justified by the counterbalancing public benefit from the training. The Commission concluded that such "expenditures would not be a prohibited use of office for the private gain of Authority employees."

Finally, in a more recent opinion, the Commission set forth the circumstances under which the Ethics Act allows a State Licensing Board to purchase meals for its members and staff at Board meetings. Significantly, however, the ruling in Advisory Opinion 2012-27 "does **not** extend to local governmental officials and agencies, e.g. City Council Members, County Commissioners or other local agencies."[1]

Thus, consistent with the above-cited advisory opinions, the Commission finds that public funds, including Concealed Weapons Funds, may **not** be used for staff meetings or meetings with other public officials, e.g. if the sheriff has a staff meeting with his deputies. While the surplus money in the Concealed Weapons Fund may be "expended for other law-enforcement purposes or operating needs of the sheriffs office as the sheriff may consider appropriate", the Commission finds that there is nothing in this language which authorizes Sheriff's Departments to use this money for meals for staff meetings when other public agencies are not permitted to do so.

There may be limited exceptions. For example, if an agency has offices around the State and twice a year brings all employees to Charleston for a meeting, then, under these circumstances it **may** be permissible under the Ethics Act and applicable Internal Revenue Service rules to provide a "working lunch" if the lunch is provided for the convenience of the employer. On the other hand, in county offices, there appears to be no legal precedent or authority to provide lunches for staff meetings or official meetings, e.g. if the sheriff meets with the police chiefs of municipalities within the county.

The Requester also asks what other limitations apply in regard to the use of Concealed Weapons Funds. First and foremost, expenditures from the Concealed Weapons Fund may not be used for the personal gain of any person(s). Next, it must be an authorized expenditure. Finally, as required by W. Va. Code§ 61-7-4(c), any expenditure must be related to law-enforcement purposes or the operating needs of the Sheriff's Office. Purchases of office furniture or weapons relate to the needs of the Sheriff's Office and constitute authorized expenditures. Sheriffs should exercise caution in the expenditure of these funds and if they ever have any questions, should contact the Ethics Commission, or the Auditor's Office, or both.

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 similarly situated public servants unless and until it is amended or revoked, or the law is changed.

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

[1] By letter opinion dated October 17, 1996, the State of West Virginia Department of Tax and Revenue ruled that there is no statutory authorization for the purchase of food for city employees (with two exceptions, not relevant here). The letter reads, in relevant part: "The only other authorized use of public funds for the purchase of meals for employees is when it is related to travel on official city business."