ADVISORY OPINION NO. 2011-05

Issued On April 7, 2011 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **University President** asks whether public funds may be used to pay membership dues for the President and the President's spouse to join the local Rotary club.

FACTS RELIED UPON BY THE COMMISSION

In support of this request, the Requester states:

1) The President wants to join Rotary to represent and promote the institution in the local business community. The business relationships developed with the local business community will enhance opportunities for students through internships and employment opportunities.

2) The President's employment contract states the following: *"The Board recognizes that the spouse of a ... President is often called upon to devote substantial time and energy to activities which benefit the ... College. Your spouse is hereby authorized to serve when called upon as a representative of the institution, and to accept payment or reimbursement from the institution or the ... Foundation, Inc. for expenses incurred in connection with such activity, to the extent such payments are authorized by you or the Foundation, and it is understood that your spouse may use facilities and other resources of the institution in the same manner as an employee when involved in such activity".* The purpose and institutional benefit for the President's spouse's membership in Rotary would be the same as stated for the President.

According to its website, the mission of Rotary International is "to provide service to others, promote integrity, and advance world understanding, goodwill, and peace through its fellowship of business, professional, and community leaders." The Requester states that membership dues are $10 per month, plus a one-time fee of $30 for new members. (It does not appear that there is a spousal discount.) The monthly dues do not include payment for weekly meals, neither does the Requester seek permission to spend public funds for Rotary meals.

Although the institution has used university foundation funds in the past, the Requester prefers to use public 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.

W. Va. Code § 6B-2-5(n) reads:

> Any person who is employed as a member of the faculty or staff of a public institution of higher education and who is engaged in teaching, research, consulting or publication activities in his or her field of expertise with public or private entities and thereby derives private benefits from such activities shall be exempt from the prohibitions contained in subsections (b), (c) and (d) of this section when the activity is approved as a part of an employment contract with the governing board of the institution or has been approved by the employee's department supervisor or the president of the institution by which the faculty or staff member is employed.

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In establishing the Ethics Act, the Legislature sought to create a code of ethics to guide public officials and employees in their public employment. The expressed goal was to assist public servants in avoiding conflicts between their public service and any outside personal interests. The Ethics Act also recognizes the unique position held by state university employees, and includes a higher education exemption.

The Requester, a University President, asks whether public funds may be used to pay membership dues for the President and the President's spouse to join the local Rotary club. In support of this request, the Requester states that Rotary membership would allow the President to represent and promote the institution in the local business community. Further, the Requester states that business relationships developed with the local business community through the President's Rotary membership will enhance opportunities for students through internships and employment opportunities.

In Advisory Opinions 2000-15 and 2001-25, the Commission authorized a county commission and a county board of education respectively to use public funds to pay membership dues to the Chamber of Commerce. In AO 2000-15, the county commission stated that membership in the Chamber, which promotes community business interests, would benefit both the county commission and the Chamber. In AO 2001-25, the BOE argued that membership in the Chamber would help it promote educational and employment opportunities for its students.

In each instance, the Commission authorized the expenditure of public funds for dues, but denied both requests for the expenditure of public funds to pay for meals at Chamber luncheons, dinners, and award dinners, as a violation of the Ethics Act's private gain prohibition.

Here, the Requester only seeks to use public funds to pay for the President's and the President's spouse's membership dues (and related one-time fees). The University argues that the business relationships developed with the local business community will enhance opportunities for students through internships and employment opportunities. The Ethics Commission finds that this goal is consistent with those stated in the earlier cited opinions. Thus, the payment of dues for the President does not violate the private gain provision.

Even though the University could use foundation funds instead—and evidently has done so in past administrations—this does not change the analysis under the Ethics Act. Additionally, although the Requester has not so indicated, membership in Rotary could provide an opportunity for the President to fundraise for the University. Under either or both scenarios, the primary benefit inures to the University rather than to the President.

Although the higher education exemption provided in the Ethics Act could authorize such expenditures, there are no facts to support a claim that the President's employment contract provides for the payment of dues to local organizations such as Rotary. *See generally* AOs 90-109, 90-131, and 96-16 (Exemption is available only when the activity has been approved as part of the employment contract).

As it relates to the second question, however, public funds may **not** be used to pay the spouse's dues, even though the spouse may on occasion fill in for the President. Notwithstanding the contract language quoted hereinabove, the President's contract does not expressly provide for the payment of dues for the President's spouse. There are no facts to demonstrate that the spouse is a public servant. As a result, the President's spouse would personally benefit from the Rotary membership more than the institution would. Therefore, the expenditure of public funds to purchase the spouse's membership would violate the Ethics Act.

Thus, the University is authorized **only** to spend state funds to pay for the President's Rotary membership dues and one-time fee of $30 for new members. The University is prohibited, however, from spending state funds to pay for: the President's spouse's Rotary membership dues and/or one-time fee of $30 for new members; the President's meals associated with attending any Rotary meeting or function; and any other cost or fee associated with Rotary membership, e.g. contributions to a related philanthropic organization. There is nothing in the Ethics Act, however, which prohibits the Foundation—a separate, non-government entity—from paying for the spouse's membership in Rotary and/or for paying for meals associated with Rotary meetings or functions for the President and/or the President's spouse. *See e.g.* AO 90-116 (Ethics Commission found that higher education exemption permits university faculty and staff to receive foundation benefits without violating the Ethics Act's private gain provision)

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.

Kemp Morton, Chairperson