

Advisory Opinion 2021-07

Issued on May 6, 2021, by

The West Virginia Ethics Commission

Opinion Sought

A **County Assessor** asks whether he may park his assigned county vehicle at his home to use for travel related to his public duties but not for commuting to work or other personal use.

Facts Relied Upon by the Commission

The Requester is a County Assessor. He uses a county-owned vehicle for travel related to his public duties. He states that he does not and would not use the county vehicle to commute to work or for other personal use. The Requester uses the county vehicle, on average, one week per month to attend out-of-town conferences, classes, and meetings. He does not use the vehicle in the county for field work related to assessing the value of properties for tax purposes.

The Requester's assigned vehicle is currently parked at the courthouse where the Assessor's Office is located. He asserts that there is limited parking available in the area. Often, he and other employees and customers of the nearby businesses must park in private driveways or in farther away locations which are inconvenient and difficult to navigate.

The field appraisers/data collectors in the Assessor's Office are assigned county vehicles to use daily in the field. The vehicles are parked at the courthouse when they are not in use. The Assessor's Office has a vehicle use policy for the field appraisers that prohibits the personal use of the vehicles.

The Requester lives 33 miles from the courthouse. Presently, a family member drives him to and from the courthouse to get and return the county vehicle, so he does not have to leave his personal vehicle in public parking while he is out of town. The Requester asserts that if the vehicle is kept at his home, then he could leave directly from his home, and in most cases, he would reach the destination in less time than if he first went to the courthouse. He estimates that the mileage on the vehicle would not increase, or only nominally increase, if the vehicle were parked at his home. If he parks the vehicle at his house, it will benefit the county by freeing up a parking spot at the courthouse which, as set forth above, has limited parking spaces available.

Code Provisions Relied Upon by the Commission

W. Va. Code § 6B-2-5(b)(1) provides, 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.

ADVISORY OPINION

The Ethics Commission has issued Advisory Opinions concerning the use of government-owned vehicles by public servants. In 2013-57, for example, the Ethics Commission reaffirmed the following rule of law:

As the Ethics Commission stated in Advisory Opinion 91-86, “The unauthorized private use of a public vehicle constitutes a use of public office for private gain.” The Commission further opined that even the **authorized** private use of a public vehicle could constitute use of public office for private gain, depending on the specific facts and circumstances.

In Advisory Opinion 2002-01, the Commission held that county employees may, under some circumstances authorized by W. Va. Code § 7-7-16a, use county vehicles to commute to work. The Commission stated:

This statute establishes the extent to which county vehicles may be used by county personnel for private travel. It clearly limits the personal use of county vehicles by county personnel to travel to and from work - and then only when "... directly connected with and required by the nature and in the performance of ..." the person's public duties.

In the face of this statutory limitation, a vote to approve further personal use of county vehicles could constitute a prohibited use of office for the private gain of the Executive Director and be a violation of the Ethics Act.

The rules of law expressed in these Advisory Opinions are not implicated in the instant situation as the Requester states he is not using the vehicle for commuting to work or for other personal use. Therefore, the only question is whether parking the county-owned vehicle at his home amounts to using his public office for his private gain in violation of W. Va. Code § 6B-2-5(b)(1).

The private benefit conferred to the Requester is that a family member would no longer need to drive the Requester 33 miles between his home and the courthouse to get and return the county vehicle. Here, the Commission will apply its holding in Advisory Opinion 2018-07, in which it “recognized that in some cases there exists an overriding public benefit sufficient to justify private gain to a public servant,” citing Advisory Opinion 1991-02.

In Advisory Opinion 1991-02, the Commission ruled that a county board of education may allow law enforcement officers to live in their private mobile homes on the board's properties without paying rent for the land. The Commission found that this arrangement served as a deterrent to criminal conduct, stating that the public "will benefit significantly from this practice." In Advisory Opinion 2018-07, the Commission found that the private gain to a sheriff living rent-free in a house located in a county park was outweighed by the public benefit. The public benefitted from the enhanced security at the park and the sheriff's agreement to repair and maintain the house while he lived in it.

Here, there would be no significant cost increase to the County if the vehicle were parked at the Requester's home. Further, the Commission finds that the possible private gain to the Requester and his family is outweighed by the benefit of an additional parking space being made available at the courthouse.

The Ethics Commission holds that the Requester may park his county-assigned vehicle at his home to use for travel related to his public duties which does not include commuting to work or other personal use.¹

This Advisory Opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester may 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.

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
WV Ethics Commission

¹ The Commission has no authority to determine any possible Federal or state tax consequences that may arise from the Requester's use of the vehicle or the location where it is parked.