

ADVISORY OPINION NO. 91-86

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 5, 1991

GOVERNMENTAL BODY SEEKING OPINION

Executive Director of a Public Body Corporate

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a public official to accept the use of a State owned vehicle to commute to and from work?

FACTS RELIED UPON BY THE COMMISSION

The requestor is and for a number of years has been the Executive Director and chief administrator of a Public Corporation. He is employed by the Board of Directors of the Public Corporation and serves at its will and pleasure. His salary and fringe benefits are set by the Board of Directors and are not subject to any limitation under statute or regulation.

One of the fringe benefits of the requestor's employment is the use of a vehicle that was purchased by and is titled in the name of the Public Corporation. His duties require that he frequently travel throughout the State, and he uses the vehicle for that purpose. He also uses the vehicle to commute to work from his residence, but otherwise does not use the vehicle.

The requestor maintains a record of the days on which he drives the vehicle to and from work and the State Fund allocates a monetary value to such usage, which he regards as additional compensation and reports for purposes of State and Federal income tax.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(b)(1) states in pertinent part that...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...

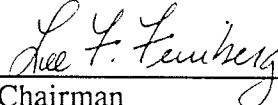
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WV Code §6B-2-5(b)(1) provides that public officials and employees may not use their public positions or prestige for their own private gain.

The **unauthorized** private use of a public vehicle constitutes a use of public office for private gain. Whether the **authorized** private use of a public vehicle also constitutes use of office for private gain in violation of W.V. Code §6B-2-5(b) will depend on the specific facts in a given case. For example, if there is evidence of collusion between the employer and the employee, then the authorization does not immunize the employee from liability under this provision of the Ethics Act. Similarly, if the authorized use is not plausible or the alleged authorization is not credible, then the Commission will be more likely to find that the acceptance of such usage may violate the Ethics Act.

In this situation, there is no evidence of collusion between the employer and the requestor. The agency allocates a monetary value to the use of this vehicle and taxes are paid by the requestor on all private use. The agency's policy openly states that the personal use is intended as a part of the requestor's compensation package. The Commission would note that in lieu of providing this limited use of a public vehicle, the agency could merely increase the salary of the requestor. Also, the authorization is credible in this case because it is not limitless, but rather is explicitly confined to commuting to and from work and to the performance of the requestor's official duties.

This opinion is limited only to a determination that requestor's acceptance of the limited use of a State vehicle as outlined herein is not a violation of the Ethics Act. It should not be relied upon by the requestor's employer, or any other state agency, as authority for authorizing the private use of a public vehicle. Further, it is not intended to convey support for the proposition that partially compensating a public employee with restricted use of a state vehicle is legal under the West Virginia laws and regulations governing the use of official vehicles. That is a matter that can only be resolved by the State Travel Management Division of the Department of Administration.


Chairman