

ADVISORY OPINION NO. 2004-26

Issued On January 6, 2005 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A State Agency asks whether an employee association may operate vending machines in an area of a public facility to which members of the general public have limited access.

FACTS RELIED UPON BY THE COMMISSION

The employees of a State Agency have formed an employee association. The association has a booster account. The proceeds from the booster account are used for employee picnics, parties, scholarships and donations to employees who have exhausted their sick leave.

Proceeds from vending machines fund the booster account. The machines are located in an area of a public building which has been designated for employee use. Due to security concerns, the public has limited access to both the facility and area in question.

The employee association arranges for the operation of the machines and receives any profits derived from them. Due to the location of the machines, most of the profits from the vending machines result from purchases made by the employees, not members of the general public.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W.Va. Code § 6B-2-5(b)(1) *Use of public office for private gain.* – 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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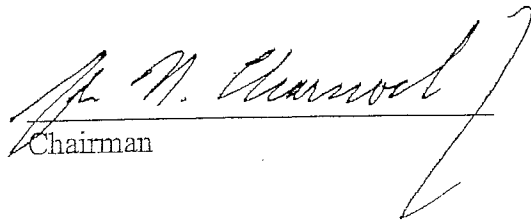
W.Va. Code § 6B-2-5(b)(1) prohibits public servants from using their public positions for private gain. Pursuant to this code section, a public employee may not use public resources for personal pecuniary gain.

The vending machines are located in an area of the facility designated for employee use. Revenues from the machine are generated largely from voluntary purchases made by the employees. As members of the public have restricted access to the facility, likewise the amount of purchases they make are de minimis. Based upon these facts, the Commission finds that it is not a violation of the Ethics Act for the employee association, at the discretion of management, to operate the machines

and retain the profits; provided, that the association reimburses the State Agency for any expenses incurred by the Agency through the operation of the machines.

The vending machines require electricity for their operation. Public monies are used to pay for the electricity. Therefore, the employee association needs to reimburse the State Agency for this expense.

The Commission notes that this opinion is limited to the specific facts and circumstances of this particular case, and the decision may not be relied upon by others without having first consulted with and received written confirmation from the Ethics Commission. The Commission further notes that W.Va. Code 18-10G-1 *et. seq.* governs the operation of food service in public buildings. The State Agency must independently determine whether the operation of the vending machines complies with that code provision as the Commission is without authority to interpret this particular statute.

  
Chairman