

**ADVISORY OPINION NO. 93-37**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON OCTOBER 7, 1993**

**GOVERNMENTAL BODY SEEKING OPINION**

Attorney for a County Clerk

**OPINION SOUGHT**

Is it a violation of the Ethics Act for a county official, sued in his individual and official capacity, to allow the attorney for the State Board of Risk Management representing him to interview county employees during working hours?

**FACTS RELIED UPON BY THE COMMISSION**

West Virginia Code §29-12-1 et seq. established the Board of Risk and Insurance Management to create and supervise a program for property and liability insurance for public officers and employees. The Board has general supervision and control over all public property, activities and responsibilities and is empowered to negotiate and effect settlement of any and all claims relating to such activities for the state and its political subdivisions.

An employee of the County Clerk's office brought a civil suit against the County Clerk in both his individual and official capacity.

The State Board of Risk Management retained an attorney to represent the County Clerk. In defense of this civil suit, the attorney met with the County Clerk and Chief Deputy for the purpose of gathering background information. This meeting took place during normal work hours.

Subsequently, the attorney for the plaintiff in the civil suit filed a petition for an injunction prohibiting the defendant and his counsel from interviewing the employees of the County Clerk's office about the lawsuit during public work hours.

**PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

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

## ADVISORY OPINION

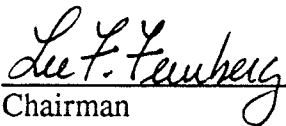
Public servants engage in many governmental activities which involve numerous governmental responsibilities and obligations which expose those public servants to potential liability to lawsuit. Such a lawsuit is actually a potential liability to the public treasury. The County Clerk is currently the defendant in a civil suit which arose from actions taken in the course of his official responsibility.

Pursuant to WV Code §6B-2-5(b)(1), public officials and public employees are prohibited from using their public office for their own private gain or for the private gain of another. The Commission has determined that allowing the attorney for the Board of Risk Management to interview the employees of the County Clerk's office regarding this civil action, while they are on public work time, would not constitute a prima facie use of public office for private gain.

Public officials involved in litigation relating to their official activities may allow public employees under their control to discuss the litigation with the representatives involved in the litigation. However, those public officials have a concomitant responsibility to ensure the efficient functioning of their offices so that services are delivered to the public in a timely fashion. Reasonable restrictions may be placed on access to public servants during work hours. Any policy regarding such restrictions, however, must be imposed equally on **all** sides involved in the litigation.

Therefore, it would not be a violation of the Ethics Act for a county official, sued in his individual and official capacity, to allow the attorney representing him to interview county employees during working hours provided the policy of access to the public employees is applied in an even handed manner.

The Commission notes that this Advisory Opinion is limited solely to the question of whether the **Ethics Act** prohibits a county official, sued in his individual and official capacity, to allow the attorney for the State Board of Risk Management representing him to interview county employees during working hours.

  
Chairman