

ADVISORY OPINION NO. 98-29

Issued On December 3, 1998 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A Town and Town Employee ask whether the Town may contract with the full-time clerical Employee to prepare statistical reports on her own time.

FACTS RELIED UPON BY THE COMMISSION

The Town is required by a State agency to file periodic reports on police activity. The State agency has approved computer software which facilitates the collection, collation and use of the statistical reports filed by municipalities.

The Town is reluctant to make the substantial investment necessary to acquire the computer software required by the new reporting format. A full-time Town Employee has offered to personally purchase the software and prepare the reports after regular working hours for a fee. The Employee, who currently has no official involvement with preparing the report, hopes to secure similar after hours work from other small municipalities which may prefer not to invest in the State software.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b)(1) provides in pertinent part that a public servant ... 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.

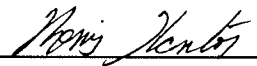
West Virginia Code 6B-2-5(d)(1) provides in pertinent part that ... no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which such official or employee may have direct authority to enter into, or over which he or she may have control

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The Ethics Act prohibits public servants from having a personal financial interest in a public contract over which their public position gives them the authority to award or control. The Employee's clerical position gives her no authority to award or control Town contracts. Therefore it would not be a violation of WV Code 6B-2-5(d) for the Town to contract with her to provide the State mandated statistical reports.

The Ethics Act also prohibits public servants from using their public positions for their own private financial gain or for the private financial gain of another person. This provision requires that Town Council offer the contract for bid, follow established purchasing procedures and act in a fair and evenhanded manner in securing a contract for the required statistical reports.

No other provision of the Ethics Act prevents the Town from contracting with an Employee through a fair and evenhanded public bid process and, in the absence of the Town giving unwarranted preferential treatment to the Employee's proposal, it would not be a violation for the Town Council to contract with the Employee to provide the State reports.


Chairman