

## ADVISORY OPINION NO. 2007-05

Issued On June 7, 2007 By The

### WEST VIRGINIA ETHICS COMMISSION

#### OPINION SOUGHT

A **County Commissioner** asks if he may include reference to his government position on his business web site.

#### FACTS RELIED UPON BY THE COMMISSION

The requester has been elected to serve on a County Commission. Prior to and since his election, he operated a private law practice in the county seat and his law practice had a presence on the Internet in the form of a web site. After taking office, the requester has found that some people in the community want to contact him via his web site regarding matters within his purview as a County Commissioner, while others continue to use the web site to interact with his law practice.

Accordingly, the requester is proposing to update his web site where the initial page provides two options: "Attorney" and "County Commissioner." The content behind the "Attorney" link makes no reference to the requester's position as a County Commissioner. Likewise, the content behind the "County Commissioner" link makes no reference to the requester's law practice.

#### CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(b)(1) provides: 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 Act generally prohibits public officials from using the resources or prestige of their office for private gain. Clarifying the dimensions of this prohibition, the Ethics Commission previously determined in Advisory Opinion 97-18 that a State Trooper could not use his official title in advertising for his personal business, a driver training school. Likewise, the Commission ruled in Advisory Opinion 98-30 that a State Legislator could not include reference to his elected position in a television advertisement for his private law practice.

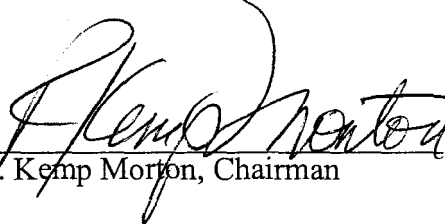
While an Internet web site may support the overall marketing effort of a business, a typical web site does not operate in the same manner as advertising in commercial media, such as radio, television and newspapers. Generally, individuals go to web sites because they are looking for something, or have an existing relationship with the entity that operates the site. The requester's web site provides an Internet presence for his law office.

The Commission tacitly recognized this distinction in Advisory Opinion 2000-04 when it authorized a County School Board to provide a link on its web page to a Board Member's personal web site

where he had information regarding his re-election campaign. Although this decision relied on the School Board's decision to make links on its web page available to any candidate running for the Board, the Commission noted that a link to another web page is "merely an option which a visitor to the site may choose to accept or ignore."

The requester is not proposing a link from the County Commission's web site to his law practice. Whether such a link would constitute an improper use of office for private gain is a matter that this Commission must decide on a fact-specific basis. The requester is effectively donating part of his private web site to support his work as an elected County Commissioner. In these circumstances, the Commission finds that any use of office for personal gain is *de minimis* within the intention of the Ethics Act and the requester may operate his web site as proposed.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et. seq.*, 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.

  
R. Kemp Morton, Chairman