

ADVISORY OPINION NO. 2007-10

Issued on October 4, 2007 By the

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A former **County Deputy Assessor** asks whether he may represent clients before the County Assessor's Office which previously employed him on matters involving the valuation of property.

FACTS RELIED UPON BY THE COMMISSION

Each County has an elected Assessor. The Assessors are statutorily charged with the duty of selecting deputy assessors to assist them in discharging their duty to assess property in an equal and uniform manner. W.Va. Code §11-2-3.

The Requester is a former Deputy Assessor. He retired from the Assessor's Office in 2002. For purposes of this opinion, the Requester concedes that through his position as a Deputy Assessor, he had oversight and responsibility for property assessments.

Persons who disagree with an assessment of their property may file an objection with the County Assessor. The Assessor may either sustain the protest or refuse it. W.Va. Code §11-3-27. Citizens who disagree with the property value assigned by the Assessor may also seek redress from the County Commission.

The Requester wants to operate a consulting business wherein he will advise property owners as to whether there may be grounds to challenge the assessed value of their property. If there are grounds to challenge an assessment, then the Requester may at times communicate directly with the Assessor's office.

Pursuant to the West Virginia Code, Assessors or their Deputies must visit properties in their counties every three (3) years to determine if any changes have occurred which would affect the valuation. W.Va. Code § 11-1C-9(a). With information from the property and sales ratio studies provided by the State tax commissioner, the Assessor makes any adjustments as are necessary to maintain accurate and current valuations. Since the Requester's departure from the Assessor's office, more than three (3) years have passed. Thus, to the extent he assisted or supervised the assessment of properties in his county prior to his departure, subsequently the Assessor and his Deputy Assessors have inspected the subject properties and made any necessary adjustments.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(b)(1) reads:

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.

West Virginia Code § 6B-2-5(f) provides, in relevant part, that:

No present or former ... appointed public official or public employee shall, during or after his or her public employment or service, represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case...or other particular matter involving a specific party or parties which arose during his or her period of public service or employment and in which he or she personally and substantially participated in a decision-making, advisory or staff support capacity, unless the appropriate government agency, after consultation, consents to such representation. A staff attorney, accountant or other professional employee who has represented a government agency in a particular matter shall not thereafter represent another client in the same or substantially related matter in which that client's interests are materially adverse to the interests of the government agency, without the consent of the government agency....

ADVISORY OPINION

West Virginia Code § 6B-2-5(f) restricts public officials and employees from representing clients in matters in which the public officials or employees substantially participated in a decision-making, advisory or staff support capacity, unless the appropriate government agency, after consultation, consents to such representation. The Requester concedes for purpose of this opinion that during his employment as a Deputy Assessor, he substantially participated in a decision-making capacity in the valuation of properties in the county which employed him. The issue before the Commission is whether his previous participation in the decision-making process in the Assessor's office precludes him from representing clients before the Assessor's office on matters related to property valuations now.

More than four years have passed since the Requester retired from the Assessor's Office. An Assessor is statutorily required to reevaluate properties in his or her county every three years. The properties in the county have been reevaluated since the

have been reevaluated, the Commission finds that in most instances the Requester has not personally and substantially participated in a decision-making capacity in regards to the currently assessed values of properties in the county by which he was previously employed. Hence, the Commission finds that it would not violate the Ethics Act for the Requester to operate a consulting business wherein he advises clients on whether they may have grounds to challenge an assessment of property made by the County Assessor's office; Provided, That, the Requester may not advise a client in a matter in which that client's interests are materially adverse to the interests of the government agency if there is an immediate and direct link between the currently assessed value of a piece of property and the prior personal actions of the Requester in the establishment of an assessment which is now the subject of a dispute. Whether there is an immediate and direct link between the past actions and employment responsibilities of the Requester as it relates to the currently assessed value of property may at times require case-by-case analysis. The Requester should seek advice from the Executive Director of the Ethics Commission in those instances.

The Commission recommends that the Requester seek advice from the WV Real Estate Appraiser Licensing and Certification Board to ensure that he is not required to be licensed by this entity in order to provide the consultation services in question. The Ethics Commission takes no position on this matter.

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