

ADVISORY OPINION NO. 2003-16

Issued On January 8, 2004 By The

WEST VIRGINIA ETHICS COMMISSION

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OPINION SOUGHT

A County Commissioner asks whether it is a violation for an individual running for re-election to office to intentionally use taxpayer funds to promote his/her reelection campaign.

FACTS RELIED UPON BY THE COMMISSION

The County Commissioner states: "Specifically I refer to the typical methods used for self promotion at the taxpayers expense, which would include but not be limited to, placing the name of the elected official on the side of County vehicles, having calendars printed with the name and picture of the elected official broadly emblazoned on said materials, as well as using the name of the elected official prominently associated with so called public service announcements which could be run at no cost; however, then it would not run at prime time."

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code 6B-2-5(b) *Use of public office for private gain* provides in pertinent part that a public official ... 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. The performance of usual and customary duties associated with the office ... 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

More than a decade ago, the Commission established that an individual may not seek an advisory opinion regarding the propriety of another person's conduct, A.O. 91-26. There the Commission ruled that "In order to have standing with the Commission to seek an advisory opinion the requestor must be asking about his or her own action(s)."

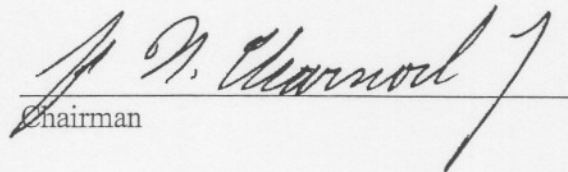
The advisory opinion process is designed to provide a way for public servants to determine, in advance, whether specific conduct they plan is consistent with the provisions of the Ethics Act. The process provides guidance and protection to public servants - its purpose is to immunize those who act in good faith reliance upon an advisory opinion.

The Legislature established a different mechanism for people who want to question the propriety of someone else's conduct. The Legislature empowered the Ethics Commission to investigate and resolve written sworn complaints that someone subject to the Ethics Act is guilty of a material violation of the provisions of the Act. The Ethics Commission may not misuse the advisory opinion process to resolve unsworn complaints about general conduct or unnamed individuals.

Nor may the Commission subvert the advisory opinion process to usurp the Legislature's authority to enact laws establishing acceptable election conduct. The advisory opinion process may not be used to legislate.

While it is a stretch, the Commission will accept the requester's assertion that he is asking about "self promotion at the taxpayers expense" in which he himself proposes to engage. However, A.O. 91-26 also established that the Ethics Commission can not issue advisory opinions on general hypothetical situations. "**Pertinent details** and **specific facts** must be submitted to the Ethics Commission when requesting an advisory opinion."

While the Commission understands the requester's concern about the misuse of taxpayer's funds, the Commission believes that the WV Legislature is the proper forum for establishing broad, comprehensive legislation regarding acceptable campaign activities.


Chairman