

ADVISORY OPINION NO. 2001-37

Issued On January 3, 2002 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Commission** and **County Surveyor** ask if the County Surveyor may be paid by the County Commission for time spent on, or in preparation for work on, county projects.

FACTS RELIED UPON BY THE COMMISSION

The county is preparing to implement new mapping requirements mandated by recently enacted law. The County Surveyor agreed to go to orientation meetings for county officials with the expectation of helping to implement the new program.

The County Commission has reimbursed the County Surveyor for his food, travel and registration expenses incurred in attending meetings, conferences and workshops associated with the mapping program. The Commission and Surveyor ask if the Commission may pay him for the time he spends attending such meetings on behalf of the County.

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code § 6B-2-5 (b) *Use of public office for private gain*, provides that in 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.”

WV Code § 6B-2-5 (d) *Interests in public contracts*, provides in part that “ ... no elected or appointed official or 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 ... a contract which such official or employee may have direct authority to enter into, or over which he or she may have control ”

WV Code § 61-10-15 states in part that ... It shall be unlawful for any member ... of any ... county or district board ... to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract ... [over] which as such member he may have any voice, influence or control ...

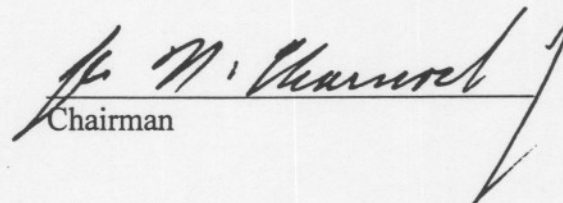
ADVISORY OPINION

In Advisory Opinion 90-166 the Ethics Commission dealt with the position of County Surveyor. There the Commission accepted the Requester’s factual assertions that “ ... the County Surveyor

of Lands is an elected public official who does not have any official job responsibilities and receives no compensation from his position.” This opinion is based on the same facts.

Both the Ethics Act and WV Code § 61-10-15 prohibit public servants from having a financial interest in a public contract over which their public position gives them control. Neither poses a problem in this situation, since the County Commissioners have no financial interest in the compensation paid the Surveyor and the Surveyor has no official voice, influence or control over the County Commission’s decision to compensate someone for the work performed.

No provision of the Ethics Act disqualifies the County Surveyor from consideration for employment by the County to work on county projects. So long as the County Surveyor is qualified to perform the activities he is paid to perform, it would not be a violation of the Ethics Act for the County Commissioners to pay him or for him to accept payment.


Chairman