

ADVISORY OPINION NO. 97-09

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WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

A County Commissioner

OPINION SOUGHT

Is it a violation of the Ethics Act or WV Code 61-10-15 for a County Commissioner to have a financial interest in the only county newspaper?

FACTS RELIED UPON BY THE COMMISSION

The requester, a County Commissioner, has recently taken a salaried position for the only newspaper published in that County. That newspaper has long been recognized as the official avenue for publication of legal notices by County Government. In addition to his salaried position, the requester expects to receive shares of stock in the newspaper over the next several years. He anticipates that within three years he will have an ownership interest in the newspaper of over ten per cent (10%).

He is concerned to establish whether he would violate any provision of the Ethics Act or WV Code 61-10-15 if the County Commission continues to publish legal notices in that newspaper.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states 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

West Virginia Code 61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...district school officer...supervisor or superintendent, principal or teacher of public schools, or any member of any other county or district board, or for any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member he may have any voice, influence or control....

The provisions of this section shall not apply to publications in newspapers required to be made by law.

ADVISORY OPINION

West Virginia Code 61-10-15

The requester is an employee and potential stockholder in the only newspaper published within the County. As a member of the County Commission, the requester would have voice, influence and control over all contracts entered into by the County Commission, including the publication of legal notices.

West Virginia Code 61-10-15 provides that it is a criminal violation for any county officer to have a direct or indirect financial interest in the proceeds of any contract if he has voice, influence or control over the letting of such contract. However, this section contains a specific proviso which exempts publications in newspapers required to be made by law.

All County Commissions are required to publish certain legal notices or advertisements. Pursuant to WV Code 59-3-2, all classes of legal advertisements are to be published in a "qualified newspaper" published in the publication area at the statutorily established rate. A "qualified newspaper" is a paper published in the area where it is first placed into circulation.

Since the requester's newspaper is the only one published within the County, it is the only "qualified newspaper" available to run the County Commission's legal notices. Therefore, it would not be a violation of WV Code 61-10-15 for the County Commission to continue to publish legal notices in this newspaper even though a County Commissioner is employed by that paper or owns stock in it.

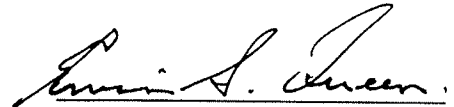
The Commission notes that in order for a County Commission to publish legal notices in any "qualified newspaper", the newspaper must accept the statutorily established rate for this service.

The Ethics Act

The Ethics Act, at WV Code 6B-2-5(d), prohibits public servants from being a party to, or having more than a limited financial interest in, a public contract which they may have authority to enter into or over which they may have control. The requester, as a member of the County Commission would have authority and control over all contracts entered into by the County Commission.

However, as noted above, the laws regulating the publication of legal notices require the selection of a "qualified newspaper." Since the requester's newspaper is the only qualified newspaper in that County, the Ethics Commission finds that the lack of choice eliminates the requester's authority or control over that choice as those terms are used in WV Code 6B-2-5(d).

Therefore, the requester would not violate the Ethics Act if any entity in the County Government, including the County Commission, continues to use the sole County newspaper to publish legal notices.


Chairman