

**ADVISORY OPINION NO. 94-33**  
**ISSUED BY THE**  
**WEST VIRGINIA ETHICS COMMISSION**  
**ON DECEMBER 1, 1994**

**GOVERNMENTAL BODY 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 apply for the position of Deputy Sheriff after his term expires?

**FACTS RELIED UPON BY THE COMMISSION**

The requester is currently serving as a member of a County Commission. He did not seek re-election and his term will expire on December 31, 1994. Upon leaving the County Commission, the requester intends to apply for a Deputy Sheriff position with the County Sheriff's office Deputy Sheriff.

On February 11, 1994, the County Commission, as part of the budget preparation process for the Fiscal Year 1994/1995, received the budget requests from the County Sheriff. The Sheriff requested an additional sum of money to pay the cost of salary and benefits which would allow him to add one new deputy position to his force.

This budget request was approved by the County Commission. The requester excused himself from all discussions and deliberations by the County Commission regarding the Sheriff's budget request and abstained from voting on the issue since he intended to apply for the newly funded position upon leaving his position as a County Commissioner.

On March 17, 1994, the requester as a member of the County Commission, voted to approve the **entire** County budget and submitted the same for final approval by the State Tax Department. The proposed budget was reviewed and approved by the State Tax Department.

The requester represents that he has had no communication with the Sheriff regarding the vacant position.

### PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(b)(1) states in pertinent part that...a public official...may not knowingly and intentionally use his... office or the prestige of his...office for his...own private gain or that of another person...

West Virginia Code §61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...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.

### ADVISORY OPINION

#### **The Ethics Act**

In considering this request, the Ethics Commission has analyzed the facts presented in light of the statutory violations contained in the Ethics Act. The Commission has determined that there is no provision of the Ethics Act which would per se prohibit the County Commissioner from applying for the position of Deputy Sheriff after his term expires on December 31, 1994.

However, the Commission would remind the requester that pursuant to WV Code §6B-2-5(b)(1) a public official may not use his public office or the resulting prestige for his own private gain. Consequently, the requester may not use his position as a County Commissioner to influence, obtain, increase or promote his personal interests while seeking the employment position with the County Sheriff's Department.

#### **West Virginia Code §61-10-15**

West Virginia Code §61-10-15 provides that it is a criminal violation for any county officer to be pecuniarily interested, directly or indirectly, in the proceeds of any contract or service when he or she may have voice, influence or control over the letting of such contract. Any person who violates this provision is guilty of a misdemeanor and is subject to removal from office. County Commissioners fall within the scope of this statute while they are in office.

The Requester notes that he intends to apply for a deputy sheriff position **after** leaving office. The Ethics commission finds that at that time he will have no voice, influence or control over the employment contracts of the Sheriff. Therefore it would not be a violation of WV Code §61-10-15 for the requester, after leaving his position as county commissioner, to apply for employment as a deputy sheriff in a position that was funded during his tenure on the County commission.

This opinion is based upon the facts represented by the requester. The Commission notes that neither he nor any person on his behalf should have any communication with the Sheriff concerning this position prior to his leaving his position on the County Commission.

  
Chairman