

ADVISORY OPINION NO. 94-36
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON JANUARY 5, 1995

GOVERNMENTAL BODY SEEKING OPINION

A County Sheriff

OPINION SOUGHT

Is it a violation of the Ethics Act for the County Sheriff to hire a former County Commissioner as a Deputy Sheriff?

FACTS RELIED UPON BY THE COMMISSION

In February, 1994 the County Sheriff requested money to hire an additional Deputy Sheriff when he submitted his proposed law enforcement budget for the 1994-1995 fiscal year.

After the County Commission approved the Sheriff's proposed budget, he applied for a Federal grant which would allow him to employ three additional officers. Half of the funding which was approved by the County Commission for the additional Deputy Sheriff's position in the 1994 - 1995 fiscal year was used as matching funds when he applied for this grant. The decision on this grant will not be available until February 1995.

The Sheriff intends to utilize the other half of the funding approved by the County Commission to hire a community policing officer in January 1995. The hiring process for the additional Deputy Sheriff will include advertising the available position.

In light of the Commissioner's abstention on the budget vote, the Sheriff assumes that this County Commissioner may be interested in applying for the job since the Commissioner's background is in law enforcement and he might want to return to that type of work when his term as County Commissioner expires.

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

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

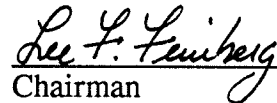
West Virginia Code §6B-2-5(b)(1) states in pertinent part that...a public official...may not knowingly and intentionally use his... office or the prestige of his...office for his...own private gain or that of another person.

ADVISORY OPINION

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 per se prohibits a County Sheriff from considering an application from a former County Commissioner for a position as a Deputy Sheriff.

West Virginia Code §6B-2-5(b)(1) provides that a public official may not knowingly and intentionally use his office or the prestige of his office for his own private gain or for the private gain of another person. Public officials must use their positions for public benefit, not the private advantage of friends, relatives, business associates or political allies. Consequently, the requester may not use his position as County Sheriff to unfairly influence, obtain, increase, or promote the personal interests of the former County Commissioner. However, it would not be a violation of the Ethics Act for the Sheriff to hire this individual provided he or she is qualified for the position when compared objectively to the other applicants.

This opinion remains the same even if the hiring process occurs after the current fiscal year ends on June 30, 1995.


Chairman