

ADVISORY OPINION NO. 94-32

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON FEBRUARY 2, 1995

**[NOTE: THIS IS A RECONSIDERATION AND REVISION OF AN EARLIER
ADVISORY OPINION NO. 94-32 ISSUED DECEMBER 1, 1994. THIS OPINION IS
INTENDED TO REPLACE THE EARLIER OPINION.]**

GOVERNMENTAL BODY SEEKING OPINION

A County Commissioner

OPINION SOUGHT

Is it a violation of the Ethics Act for a County Commissioner to write a letter of recommendation for an individual on official stationary using staff employees?

FACTS RELIED UPON BY THE COMMISSION

The requester inquires whether it would be a violation of the Ethics Act for him to write a letter of recommendation for an individual or for a county employee using official stationary and staff employees.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(b)(1) states in pertinent 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. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

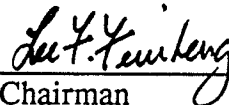
ADVISORY OPINION

Pursuant to West Virginia Code §6B-2-5(b)(1) a public official may not use his office for his own private gain or for the private gain of another. However, the performance of usual and customary duties associated with public office, without compensation, does not constitute the use of prestige of office for private gain. Included in the performance of official duties are letters of recommendation for constituents. Such letters may relate to other employment, admission to a school, or acceptance in a program.

The Commission finds that the legislative intent behind the establishment of the prohibition against the use of public office for private gain requires some pecuniary benefit to the public servant or other person. A letter of recommendation, while it may assist a person in obtaining a job or entrance to a school, does not result in the type of pecuniary benefit contemplated by WV Code §6B-2-5(b)(1).

Therefore it would not be a violation of the Ethics Act for a public official to use official stationary and staff support to write letters of recommendation or character references for jobs, admissions to schools or other such programs for acquaintances, constituents, or co-workers.

This opinion is limited to letters of recommendation as described above. It does not apply to letters endorsing an individual in a political campaign and/or soliciting campaign contributions on behalf of such individual.


Chairman

ADVISORY OPINION NO. 94-32
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON DECEMBER 1, 1994

GOVERNMENTAL BODY SEEKING OPINION

A County Commissioner

OPINION SOUGHT

1. Is it a violation of the Ethics Act for a County Commissioner to write a letter of recommendation for an individual on official stationary using staff employees?
2. Is it a violation of the Ethics Act for a County Commissioner to write a letter of recommendation for a county employee on official stationary using staff employees?

FACTS RELIED UPON BY THE COMMISSION

The requestor inquires as to whether it would be a violation of the Ethics Act for him to write a letter of recommendation for an individual or for a county employee using official stationary and staff employees.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(b)(1) states in pertinent 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. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

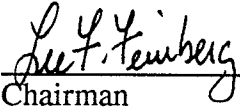
ADVISORY OPINION

Pursuant to West Virginia Code §6B-2-5(b)(1) a public official may not use his office for his own private gain or for the private gain of another. The Legislative Rule regarding private gain, at 158 CSR 6, recognizes a de minimis exception to the use of subordinates and public property. However, a public official must use caution to avoid even the appearance that he is engaged in an inappropriate use of his official position. Therefore, the Ethics Commission establishes the following guidelines regarding the use of official stationary and public personnel when preparing letters of recommendation.

The performance of usual and customary duties associated with public office, without compensation, does not constitute the use of prestige of office for private gain. Included in the performance of official duties are letters of recommendation for a current or former public employee. Such letters may relate to other employment, admission to a school, or acceptance in a program. A public official may write a letter of recommendation or a character reference letter using official stationery and staff support when the reference is based upon personal knowledge of the ability or character of an individual because the official worked with the individual in the course of his official employment. Official stationery and staff support may also be used if the official is recommending the individual for public employment.

If the public official is asked to recommend a personal friend with whom the official has not dealt in an official capacity, the public official should not use official stationery or staff support unless the recommendation is for public employment.

This opinion is limited only to letters of recommendation as described above. It does not apply to letters endorsing an individual in a political campaign and/or soliciting campaign contributions on behalf of such individual.


Chairman