

ADVISORY OPINION NO. 95-41

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON SEPTEMBER 7, 1995

GOVERNMENTAL OFFICIAL SEEKING OPINION

Potential candidate for Sheriff

OPINION SOUGHT

Is it a violation of the Ethics Act for a Sheriff to act as a bailbondsman or to own a majority interest in a bail bonding company?

FACTS RELIED UPON BY THE COMMISSION

An individual owns a majority interest in a closely held bail bonding corporation. His spouse owns 30% of the company and their child owns the remaining interest. All three stockholders are licensed and do bail bonding in several counties. The requester is considering running for sheriff in one of the counties in which the bail bonding corporation operates.

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.

West Virginia Code §6B-2-5(e) states that no present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

West Virginia Code §6B-2-5(h) states in pertinent part that...(1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to sell or lease real or personal property to any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or

(B) Has a matter before the agency to which he or she is working or a subordinate is known by him or her to be working.

ADVISORY OPINION

The Legislature has long recognized the potential for conflict between public servants in law enforcement and bondsmen. For example, it has banned gifts or contributions from bondsmen to sheriffs (WV Code §51-10-3), and placed restrictions on the access of bondsmen to police precincts, jails, and magistrate courts (WV Code §51-10-7). The last restriction would particularly hamper the requester from performing the expected duties of sheriff.

In Advisory Opinion No. 92-25 the Commission stated that it would be a violation for a part-time police dispatcher to be employed part-time by a bailbond company saying it "... creates a situation that is rife with potential conflicts of interest. The requester's position...would afford her immediate access to information regarding arrests and the need for services of a bonding company which potential competing bonding services would not be privy to."

WV Code §6B-2-5(h) provides that full-time public servants may not (1) seek employment with, (2) be employed by, or (3) seek to sell or lease real or personal property to any person who (a) has a matter before their agency on they are working or a subordinate is known to be working or (b) had a matter on which they took, or a subordinate is known to have taken, regulatory action within the preceding twelve months.

The duties of county sheriff are significantly involved in the criminal justice system of the county; so much so that all those charged with a criminal violation and in need of the services of a bailbondsman must be considered as having a matter before the sheriff's department and subject to regulatory action of the sheriff or his deputies. It would therefore be a violation of WV Code 6B-2-5(h) for the requester, as county sheriff, to engage in providing bailbond services to those subject to criminal charges within his county.

The Commission also finds that it would be a violation for a company substantially owned by the sheriff to provide bailbond services to those subject to criminal charges within his county. Having found that a sheriff may not serve as bailbondsman in the circumstance described, it would be a violation for the sheriff to accomplish through a surrogate business entity that which he could not do individually.

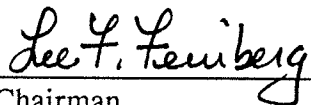
The Commission further finds that it would not be a violation of the Ethics Act if a sheriff were to personally provide bailbond services, or have a substantial ownership interest in a company providing such services, in counties other than the county in which the sheriff serves. It is important to note that the Commission has no authority over and its opinion has no affect on other WV Code provisions, outside the Ethics Act, which deal with this issue.

The requester is cautioned that if elected sheriff he must be sensitive to the need to avoid any disclosure or use of information obtained by virtue of his position as sheriff for the benefit of the bonding company in which he has an interest. Such an action would be a violation of WV Code §6B-2-5(e) and/or WV Code §6B-2-5(b)(1).

Finally, the Commission notes that WV Code §6-3-1 provides, in part, that

A sheriff in any county in which there are more than four deputies shall devote his full time to the performance of services or duties required by law of such sheriff, and he shall not receive any compensation or reimbursement, directly or indirectly, from any person, firm or corporation for the performance of any private or public duties: Provided, That any such sheriff may retain or make any investment and receive income therefrom, unless such investment is otherwise prohibited by law or will impair his independence of judgment in the exercise of, or might reasonably tend to conflict with the proper discharge of, the services or duties of his office.

The Commission can only render opinions on whether conduct would violate the provisions of the Ethics Act and WV Code §61-10-15. Therefore this opinion should not be interpreted as a finding that any proposed business interests by the requester would not violate WV Code §6-3-1.


Chairman