

ADVISORY OPINION NO. 92-43

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON NOVEMBER 5, 1992

GOVERNMENTAL BODY SEEKING OPINION

Legal Counsel for a County Board of Education

OPINION SOUGHT

Is it a violation of the Ethics Act for an individual who becomes a part-time county prosecuting attorney to continue his private employment with that county's board of education?

FACTS RELIED UPON BY THE COMMISSION

The requestor is currently an attorney in private practice retained as a part-time staff attorney for a county board of education. This work is performed at an office located on board premises.

The requestor is also running unopposed in the fall general election for the office of that county's prosecuting attorney. This is a part-time elected position due to the size of the county.

After the requestor takes office in January 1993 he would like to continue to serve as the staff attorney for the county board of education. He is willing to perform these services as either an employee from an office at the board location or on an independent contractor basis.

Pursuant to WV Code §7-4-1, it is the duty of prosecuting attorneys to provide legal services to county boards of education as part of their official job responsibilities. However, a county board of education has the right and authority to hire independent counsel in certain cases when its prosecuting attorney cannot or will not represent it.

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. 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.

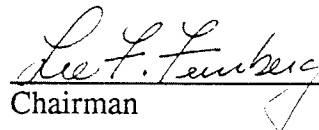
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The requestor would like to continue his employment as a part-time staff attorney for a county board of education after his election to the part-time office of county prosecuting attorney. However, West Virginia Code §7-4-1 provides that a county prosecuting attorney is required to provide legal services to that county's board of education as part of his official job responsibilities. The Prosecuting Attorney's salary is fixed by WV Code §7-7-4.

Further, WV Code §6B-2-5(b)(1) prohibits a public official from using his public position or prestige for private gain. This prohibition bars the acceptance of additional payment in excess of statutorily established salary for providing information or services which are expected to be provided by public officials and public employees in the course of fulfilling their official job responsibilities.

Neither WV Code §7-4-1 nor WV Code §6B-2-5(b)(1) provide for different treatment for part-time as opposed to full-time public servants.

In this instance the requestor would receive private compensation under a private employment contract requiring the performance of services the requestor must provide in his official capacity as prosecuting attorney. Therefore, it would be a violation of WV Code §6B-2-5(b)(1) for the requestor to privately contract with the county board of education to provide legal services since he is required by statute to provide such services as the county prosecuting attorney.


Chairman