

ADVISORY OPINION NO. 92-03

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 5, 1992

GOVERNMENTAL BODY SEEKING OPINION

A Part-time Prosecuting Attorney

OPINION SOUGHT

Is it a violation of the Ethics Act for a part-time prosecuting attorney to rent his own personal office equipment to the County for use in his public office?

FACTS RELIED UPON BY THE COMMISSION

There are approximately 42 part-time prosecuting attorneys in the State. In West Virginia there is a long established, open and widespread practice of permitting part-time county prosecuting attorneys to conduct their private law practices in their public offices provided official prosecutorial responsibilities are not neglected. This practice includes the use of office furniture, equipment and office personnel which are necessary to and provided for the official use of the prosecutor.

However, there are some County prosecuting attorneys' offices, including the requestor's, which lack computer or word processing equipment due to County budget constraints.

The requestor would like to rent his personal computer equipment to the County for use in his public office on a monthly or yearly basis. Any expenditure for the rental of such computer equipment must first be approved by the County Commission.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 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...

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no elected...public official...may be a party to or have an interest in the profits or benefits of a contract which such official...may have direct authority to enter into, or over which he or she may have control...

ADVISORY OPINION

Private Gain

Pursuant to WV Code §6B-2-5(b)(1) a public official may not use his office or the resulting prestige of such office for his own private gain. However, in many counties of West Virginia there is a long established, open and widespread practice of permitting part-time county prosecuting attorneys to conduct their private law practices from their public offices. The Commission acknowledged in Advisory Opinions #89-15, #89-27 and #91-61 that allowing such practice accommodates the needs of smaller counties to offer inducement to lawyers to accept the lower salaries paid for part-time prosecutors.

The use of public office space during time when it would not otherwise be needed for official business is seen as a way to reduce the cost of county government and allow a more efficient use of the prosecutor's time. This practice includes the use of office equipment which is necessary to and provided for the official use of the prosecutor.

The earlier Advisory Opinions applied to the private use of public resources, this case involves the opposite, i.e., the public use of private resources. In this case there will be a resulting private gain to requestor in the form of rental payments. This gain will be the direct result of the Requestor instigating the contract for the rental of his computer equipment. Consequently, such an arrangement would violate WV Code §6B-2-5(b)(1).

Public Contracts

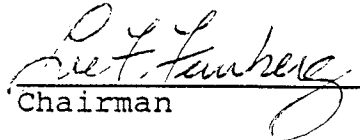
Pursuant to WV Code §6B-2-5(d)(1) a public official may not have more than a limited interest in the profits or benefits of a public contract over which he has direct authority or control.

The requestor states that any contract or agreement for the rental of computer equipment for use by the prosecuting attorney's office would be awarded and approved by the County Commission. The Commission determined that the Requestor has control over the county's decision to enter into a contract with him due to his instigation of this contract, his close involvement with the ultimate decision as the attorney for the County Commission, and his inevitable role as supervisor or overseer of the contract which will be performed in his office. For these reasons it would be a violation of WV Code §6B-2-5(d)(1) for the requestor to rent his private office equipment to the county for use in his office as prosecuting attorney.

This opinion does not prevent the County Commission from seeking an advisory opinion and exemption from the provisions of WV Code §6B-2-5(d)(1) if it can demonstrate the necessary hardship required by the Act.

West Virginia Code §61-10-15

Since this opinion finds that the proposed arrangement would violate two provisions of the Ethics Act, the Commission does not reach a conclusion on the applicability of WV Code §61-10-15.


Chairman