

ADVISORY OPINION NO. #92-09

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON APRIL 2, 1992

GOVERNMENTAL BODY SEEKING OPINION

A County Clerk

OPINION SOUGHT

- a. Is it a violation of the Ethics Act for a County Clerk to use County utilities to wash his personal vehicle?
- b. Is it a violation of the Ethics Act for a County Clerk to use County jail trustees to wash his personal vehicle?

FACTS RELIED UPON BY THE COMMISSION

The requestor is seeking the Commission's opinion on whether it would be a violation of the Ethics Act for county officials to use county water, sewer fees and electricity to clean their personal vehicles.

Further, the county clerk seeks permission to use county jail trustees to perform this task and guidance on whether he must pay the trustees for this service.

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-2-4(q) states in pertinent part that...if the Commission finds...that the facts alleged [in the complaint] are true and constitute a **material** violation of this article, it may impose...sanctions...

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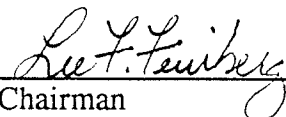
a. Pursuant to WV Code §6B-2-5(b)(1) public officials may not use their public office for private gain. If a public official made unauthorized use of county water and electricity to clean his personal vehicle there would be a use of office for private gain if such resources were not available for general public use. New legislative rules on private gain, passed by the Legislature but not yet in effect, provide that the prohibition on the use of government property for private purposes does not cover de minimis use of such property. This rule comports with the Ethics Act itself which, at WV Code §6B-2-4(q), requires a showing of a **material** violation of the Act before a violation can be sanctioned.

The Commission can only determine on a case-by-case basis when certain acts would be more than de minimis and would rise to the level of a material violation of the Ethics Act. The official is cautioned, however, that even isolated use of county resources can create the potential appearance of impropriety.

b. The Requestor also inquires as to whether the County Clerk may use jail trustees to wash the Clerk's personal vehicles and, if so, whether the trustees must be paid for their services.

It would be a violation of WV Code §6B-2-5(b)(1) if the Requestor were to use his position as Clerk to obtain the services of jail trustees to wash his personal vehicles. The legislative rules on private gain also ban the personal use of subordinates. A jail trustee's position is comparable to that of a subordinate. The pending legislative rule's prohibition on the use of subordinates excludes de minimis work or services.

The same considerations noted in the last paragraph of section a., above, would apply to a situation involving use of jail trustees. Payment or nonpayment to the trustees would be relevant only to the question of whether the violation was material rather than de minimis.


Chairman