

ADVISORY OPINION NO. 91-26

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON APRIL 4, 1991

GOVERNMENTAL BODY SEEKING OPINION

A Deputy Circuit Clerk

OPINION SOUGHT

Whether the Ethics Act allows one public official to seek an advisory opinion regarding the ethical conduct of another public official?

FACTS RELIED UPON BY THE COMMISSION

A Deputy Circuit Clerk has stated that her father has been interested in purchasing any or all mineral rights to a gas well located on his property. He has been trying to purchase a partial interest in that well from the County Assessor's spouse. The requestor believes that the County Assessor's spouse purchased this property from an individual who may have indicated to the Assessor, when remitting payment of taxes, that she wanted to sell her interest in the mineral rights.

The Deputy Circuit Clerk has asked the Ethics Commission to determine whether a County Assessor was using her office for private gain but has declined at this point to file a verified complaint as required by the Ethics Act.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-3 states in pertinent part that...a person **subject** to the provisions of this chapter may make application in writing to the Ethics Commission for an advisory opinion on whether an act or proposed action violates the provisions of this chapter, and would thereby expose **the person** to sanctions by the Commission or criminal prosecution.

West Virginia Code Section 6B-2-4 states in pertinent part that ...the filing by any person with the Commission of a complaint ...**duly verified by oath or affirmation...**

ADVISORY OPINION

The requestor is a public employee, serving as a Deputy Circuit Clerk for a County and is seeking an advisory opinion regarding the propriety of the conduct of **another** individual, specifically the County Assessor.

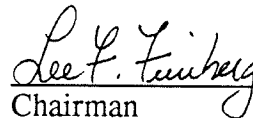
The Ethics Commission addressed a similar situation on April 5, 1990 and determined that only those affected persons may seek an advisory opinion from the Ethics Commission regarding whether his or her action or proposed action would violate the Ethics Act. Specifically, an individual may not seek an advisory opinion regarding the propriety of another person's conduct. In order to have standing with the Commission to seek an advisory opinion the requestor must be asking about his or her own action(s).

Further, the Ethics Commission previously determined that in order for members of the public to be afforded complete immunity from prosecution for good faith reliance on approved advisory opinions issued by the Ethics Commission it could not issue an advisory opinion on general hypothetical situations. Pertinent details and specific facts must be submitted to the Ethics Commission when requesting an advisory opinion.

Pursuant to the Ethics Act as amended by the Legislature on June 9, 1990, all complaints filed by individuals with the Ethics Commission must be verified by **oath or affirmation**. Until such time as the Deputy Circuit Clerk submits a **verified** complaint to the Commission, listing all pertinent factual information, an investigation into the allegations cannot be initiated.

However, if the requestor files a verified complaint, the Chairman of the Ethics Commission would appoint an investigative panel to determine whether the complaint states a sufficient basis to initiate an investigation into the alleged actions of the County Assessor.

The Commission would note that its staff has routinely made a practice of providing the public with copies of the Ethics Act and written handouts. These handouts were prepared by the staff to assist the public and covered individuals. Also, the staff is available to answer questions from the public regarding the complaint process.


Chairman