

ADVISORY OPINION NO. 91-80

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 5, 1991

GOVERNMENTAL BODY SEEKING OPINION

A County Prosecuting Attorney

OPINION SOUGHT

Whether it is a violation of the Ethics Act for the spouse of a County Prosecutor to have an interest in the profits or benefits of a public contract over which the Prosecutor has direct authority and control?

FACTS RELIED UPON BY THE COMMISSION

A kidnapping was alleged to have occurred in a County. The incident was reported to the State Police detachment in that County. The County Prosecuting Attorney was advised that the victim had gotten a close look at the attacker but was unable to identify him.

The State Police requested that the County Prosecuting Attorney provide funding from his Investigations Account to hire an artist to create a composite drawing of the attacker. The Prosecuting Attorney advised the State Police that the money was available and that the County would pay for the composite. At that time, no particular artist was discussed.

Subsequent to the appropriation of funds for the composite drawing, the State Police contacted the Prosecuting Attorney's spouse who is employed as an Illustrator and Graphic Design Artist. Arrangements were made for a meeting between the artist and the victim without the Prosecutor's knowledge or intervention.

The County Prosecutor stated that the State Police contacted his spouse because she has experience in this field and has done extensive sketching and portrait work. Further, they are aware of no other artist in the area who has experience creating composite sketches.

Upon completion of the composite drawing, the artist submitted an invoice for her services to the Prosecutor in the amount of \$100 which is her standard fee for this type of work.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(d)(1) states in pertinent part that...no elected...public official...or member of his...immediate family...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...may have control...

West Virginia Code §6B-2-5(d)(3) states in pertinent part that...where the provisions of...this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a...county...or other governmental agency, the affected governmental...agency may make a written application to the Ethics Commission for an exemption...

West Virginia Code §61-10-15 states in pertinent part that...It shall be unlawful for any county officer...to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service...when as such officer he may have any voice, influence or control.

West Virginia Code §6B-2-3 states in pertinent part that...A person subject to the provisions of this chapter may rely upon...an advisory opinion of the Commission, and any person acting in good faith reliance on any such...opinion shall be immune from the sanctions of this chapter and the sanctions of section fifteen, article ten, chapter sixty-one of the code and shall have an absolute defense to any criminal prosecution for actions taken in good faith reliance upon any such opinion...in regard to the sanctions of this chapter and the sanctions of section fifteen, article ten, chapter sixty-one of this code.

ADVISORY OPINION

Ethics Act

Pursuant to WV Code §6B-2-5(d)(1) of the Ethics Act a public official or a member of his immediate family may not have an interest in the profits or benefits of a public contract over which he has direct authority or control. For the purpose of this section "immediate family" includes a spouse residing in the public official's household. The requestor has authority and control over the contract hiring his wife even though it was delegated to the State Police Officer investigating this case.

Therefore, it would be a violation of WV Code §6B-2-5(d)(1) of the Ethics Act for a spouse of a County Prosecutor to have an interest in the profits or benefits of a public contract over which the County Prosecutor has direct authority and control.

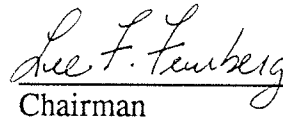
However, WV Code §6B-2-5(d)(3) of the Ethics Act provides that where such provisions would result in excessive cost, undue hardship or other substantial interference in the operation of a County agency, the affected governmental agency may make application in writing to the Ethics Commission for an exemption.

The Commission finds that undue hardship and substantial interference would result from the enforcement of the provisions established in WV Code §6B-2-5(d)(1). The County Prosecutor's spouse has experience in the field of composite drawings and has done extensive sketching and portrait work. Further, she is the only artist in the area who has experience creating such composite sketches. Therefore, the exemption is granted in this case and any future similar situations. However, this exemption will terminate when an easily accessible artist, who is qualified and experienced in the area of composite drawings, becomes available at a competitive price.

61-10-15

West Virginia Code §61-10-15 provides that it is unlawful for any county official to be pecuniarily interested, directly or indirectly, in the proceeds of any contract which as such member he may have any voice, influence or control.

However, pursuant to WV Code §6B-2-3 of the Ethics Act, any person acting in good faith reliance on any advisory opinion issued by the Ethics Commission shall be afforded immunity from the sanctions of West Virginia Code §61-10-15. The requestor may so rely on this opinion.


Chairman