

ADVISORY OPINION NO. #91-67

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON OCTOBER 3, 1991

GOVERNMENTAL BODY SEEKING OPINION

A County Circuit Clerk

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a circuit clerk to claim witness attendance fees and mileage when duly subpoenaed to another county when such appearances are considered part of his employment responsibilities?

FACTS RELIED UPON BY THE COMMISSION

The requestor is a county circuit clerk. On occasion the clerk is subpoenaed to appear before another County Circuit Court or Federal or Municipal Court. As the circuit clerk, the requestor's testimony would relate to matters of record and documents under the control of his office. For such appearances the clerk is given a witness attendance fee. However, these appearances are considered part of the county circuit clerk's employment responsibilities and would occur during his normal work hours, while on County time.

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 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. 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.

West Virginia Code Section 6B-2-5(k) states in pertinent part that...no public official or public employee shall knowingly request or accept from any governmental entity compensation or reimbursement for any expenses actually paid by...any other person.

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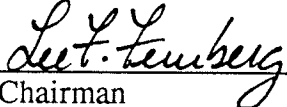
In this instance, the public official would be testifying about matters of record and documents under the direct control of his public office. Therefore, it would be a violation of subsection 6B-2-5(b)(1) of the Ethics Act for the circuit clerk to personally receive witness attendance fees and mileage when such testimony is based on matters of record and documents under the direct control of his public office.

Further, subsection 6B-2-5(k) of the Ethics Act prohibits a public official from accepting compensation or reimbursement for expenses actually paid by any other person. The requestor has stated that providing such testimony would be considered part of his public employment responsibilities and would be given during his regular work hours, while on County time.

Therefore, it would be a violation of subsection 6B-2-5(k) of the Ethics Act for the circuit clerk to personally receive reimbursement for mileage when such appearances are considered part of his employment responsibilities and are given during the normal work hours for which he is compensated.

The Commission notes that the requestor submitted other questions regarding the responsibilities and appropriate procedures for reimbursement of parking and meals. The same considerations described above would apply. If the requestor is compensated by his employer for parking and meal expenses when he is subpoenaed then it would be a violation of subsection 6B-2-5(k) for him to personally receive compensation or reimbursement for these expenses from another source as well.

Nothing in this opinion prohibits the requestor from claiming reimbursement, if available, for expenses associated with the loss of the requestor's time or for reimbursement provided to the employee for expenses such as mileage, parking and meals provided he promptly tenders such payments to the County.


Chairman