

ADVISORY OPINION NO. 90-52

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON APRIL 5, 1990

GOVERNMENTAL BODY SEEKING OPINION

A City Recorder

OPINION SOUGHT

Whether it is a violation of the Act for a City official to publish and sell a City newsletter?

OTHER FACTS RELIED UPON BY THE COMMISSION

The requestor is a Recorder for a City. She receives \$3,000 a year for her services. Before she became Recorder for the City, the Mayor asked her to put together a City Newsletter just for the citizens and businesses. This was a non-profit City newsletter. In the beginning she donated her time to do the newsletter.

However, the letter grew in size and thus took more and more of her time to prepare. She is currently receiving compensation for her time and expenses for gas for all the work that is needed to prepare this City Newsletter. Much of the news comes from the minutes she takes of City meetings.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(b)(1) states that a public official or public employee may not 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 constituent services, without compensation, does not constitute the use of prestige of office for private gain.

ADVISORY OPINION

It is the Commission's opinion that the publication of a City newsletter by the City Recorder, based in large part on minutes of City meetings gives the appearance of a public official using her office and prestige for private gain in violation of subsection (b)(1) of the Act. The Recorder's public responsibility is to record minutes of city meetings and make them available for public review.

However, the Legislature recognized that there may be certain public employees who bring to their respective offices their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities and may be in a position to seek an exemption to subsection 6B-2-5(b)(1).

Therefore, the public official now has the option of seeking a written exemption pursuant to subsection 5(b)(2) if she can demonstrate:

- (1) The public office held is not such that it would ordinarily be available or offered to a substantial number of the citizens of this State;
- (2) The office held is such that it normally or specifically requires a person who possesses personal prestige; and
- (3) The person's letter of appointment provides or anticipates that the person will gain financially from activities such as this one which are not a part of her office.


CHAIRMAN