ADVISORY OPINION NO. 2013-04

Issued On March 7, 2013 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Commission** asks whether a full-time county employee may be paid for performing multiple jobs concurrently.

FACTS RELIED UPON BY THE COMMISSION

The Requester County Commission is responsible for the County's budget, including the Sheriff's budget. The Sheriff employs one person to fulfill the job duties of three County positions. The positions are that of Court Bailiff, Home Confinement Officer and Process Server.

The Requester states that this employee used to be paid from the General County Fund until recently the West Virginia State Auditor's Office informed the County Commission that he had to be paid for his service of process duties from the service of process fund.[1] Hence, he is now paid from two funds but still only receives one paycheck.2

There are separate job descriptions for each position. The employee is performing the job duties of all three positions within a 40 hour work week. The Requester states that the employee may combine his time spent performing the duties of Horne Confinement Officer and Process Server. For example, when he travels to an area to fulfill his home confinement duties, he may also serve process papers on a citizen. This is more cost-efficient to the County as it avoids duplication of travel. The Requester states that the employee is not being paid twice for the same work.

The Requester further asks if the current arrangement is prohibited, whether it would be permissible to employee this person under one job description which incorporates all duties to be performed by the position.

CODE PROVISIONS RELIED UPON BY COMMISSION

W. Va. Code§ 6B-2-5(b) reads in relevant part:

---

[1] Sheriffs are authorized to charge a fee for service of process. These fees are deposited in a special fund and are to be used by the Sheriff to cover the cost of providing these services. W.Va. Code§ 59-1-14(d).

[2] The Requester mistakenly put in his letter that the employee is paid two paychecks; however, the County has clarified that he receives only one paycheck, but that the funds are drawn from two accounts.

> 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.

W. Va. Code§ 6B-2-5(l)(1) reads in relevant part:

> A public employee may not receive additional compensation from another publicly-funded state, county or municipal office or employment for working the same hours, unless:
>
> (A) The public employee's compensation from one public employer is reduced by the amount of compensation received from the other public employer;
>
> (B) The public employee's compensation from one public employer is reduced on a pro rata basis for any work time missed to perform duties for the other public employer;
>
> (C) The public employee uses earned paid vacation, personal or compensatory time or takes unpaid leave from his or her public employment to perform the duties of another public office or employment;

ADVISORY OPINION

There is no provision in the Ethics Act which prohibits a County Employee from performing three separate job functions for the same County Employer. This arrangement does not constitute unlawful "double dipping", i.e. receiving additional compensation from another publicly-funded county office for working the same hours. W. Va. Code§ 6B-2-5(1)(1). Instead, the public employer has made the management decision that having one employee perform the duties of the three positions is in the best interest of the county. While the employee may be compensated from two county funds, the source of the funding does not change the analysis or conclusion herein.

Moreover, when a County or public agency makes the management decision to impose additional duties upon an employee or to give them additional job titles, there is no requirement that the employee keep time records reflecting the time spent tending to the duties of each job. For example, the employee does not have to record what hours he spends working as a bailiff as opposed to serving papers. While public agencies in some circumstances may want to impose this requirement for statistical purposes to assist them in assessing their staffing needs, the Ethics Act does not require it under the circumstances presented.

Further, the Ethics Act does not require that the Requester combine the employee's job duties into one job description to comply with the Ethics Act. The test is not whether there is one job description as opposed to three; instead, the test is whether the public employer has a rational basis for making the personnel decision in question. As such, the Requester, in consultation with the Sheriff, may determine whether it is in the best interest of the county to continue the current arrangement.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code §§ 68-1-1, *et seq.,* and does not purport to interpret other laws or rules. Pursuant to W. Va. Code § 68-2-3, this opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked.

s/ R. Kemp Morton, Chairman
Kemp Morton, Chairman