ADVISORY OPINION NO. 2013-05

Issued On March 7, 2013 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

An elected **County Assessor** asks whether he may continue consulting for a photography firm in the evenings and on the weekends.

FACTS RELIED UPON BY THE COMMISSION

An elected County Assessor is currently a consultant for a photography firm. He states that he performs his job duties as County Assessor during the week from 8:30 a.m. until 4:30 p.m. He asks whether he may continue his secondary employment with a photography firm.

CODE PROVISIONS RELIED UPON BY COMMISSION

W. Va. Code§ 6B-2-5(b) provides:

> (1) 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(h) reads, in relevant part:

> (1) No full-time official may seek ... to purchase, sell or lease real or personal property to or from any person who:
>
> > (A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or
> >
> > (8) Has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working

ADVISORY OPINION

The West Virginia Ethics Act prohibits public employees from using their public office or the prestige of their office for their own private gain. W.Va. Code§ 6B-2-5(b). Here, the Requester is not violating W. Va. Code§ 68-2-5(b) because the Requester's position as County Assessor is not being used in any way to further the Requester's work as a

consultant with the photography firm, nor would the consulting be construed to be a part of a County Assessor's usual and customary duties. Nevertheless, the analysis does not end here.

The Ethics Act, W.Va. Code§ 6B-2-5(h), prohibits full-time public officials from being employed by persons and businesses they regulate. *See also* W.Va. § 158-11-1 et. seq. and Ethics Commission Guideline entitled "How to obtain an employment exemption for a new job or a second job". The Requester is subject to these limitations as his position is full-time, not part-time. Hence, he may not be employed by persons or businesses he regulates.

The Commission has previously ruled in A.O.s. 96-52 and 2011-14 that an elected Assessor exercises regulatory authority over all property owners in the county where he or she serves since Assessors are responsible for assessing the value of all real or personal property in the county. *See also* A.O. 2005-20 wherein the Commission imposed strict limitations on an elected County Assessor in regard to the establishment of a legal defense fund due to the power he exercised over property owners.

In this case, the Assessor seeks to work for a photography firm located in the county where he serves. While he does not state if the photography firm or its owners own real property in the county, presumably one or the other does. Moreover, businesses are required to pay county taxes on the assessed value of personal property/equipment owned by the business and the Assessor's Office is responsible for assessing the value of such equipment.

While the photography business may own little equipment, and while the Assessor may be paid a limited amount of money for his work with this business; still, for purposes of the limitations in§ 6B-2-5(h), the Assessor exercises regulatory control over the photography firm. Hence, the Commission finds that he may **not** be employed by the photography firm. The only exception to this prohibition is if he seeks and receives an employment exemption from the Commission wherein he demonstrates that he will be adversely affected if he is prohibited from being employed by the photography business. Based upon information and belief, a full-time elected official has never applied for such an exemption. Nevertheless, if the Requester submits a request, the Commission will consider it on its merits.

Additionally, W. Va. Code§ 7-7-4 provides in relevant part: "Any county clerk, circuit clerk, county assessor or sheriff of a Class I through Class V county, inclusive, any assessor or any sheriff of a Class VI through Class IX county, inclusive, shall devote full-time to his or her public duties to the exclusion of any other employment. .." The Ethics Commission does not have authority to interpret or apply this provision to the requester's inquiry, but it too may prohibit him from having a second job.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code §§ 6B-1-1, *et seq.,* and does not purport to interpret other laws or rules. Pursuant to W. Va. Code§ 6B-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