

ADVISORY OPINION NO. 90-90

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Part-time County Prosecuting Attorney

OPINION SOUGHT

Whether an exemption should be granted pursuant to subsection 6B-2-5(d)(3) of the Act to allow a County Commission to continue to rent office space and equipment from the County Prosecutor's private practice?

OTHER FACTS RELIED UPON BY THE COMMISSION

The office of prosecuting attorney is a part-time position which has been served by the present prosecuting attorney since January 1, 1990. The County Prosecuting Attorney maintains a private practice which is located within 10 miles of the County Courthouse.

The Prosecutor, two Assistant Prosecutors, one full-time secretary and one part-time secretary use the facilities at the Prosecutor's private law firm to perform their duties. The County Commission pays the Prosecutor the sum of \$450 per month for the private law firm's offices, facilities, equipment and furniture which is regularly deposited into the private firm's general office account.

The rental rate includes the use of the parking lot, waiting room, secretary's office, offices for the Prosecutor and two assistants, restrooms, extensive law library, kitchen and all of the office's equipment and facilities.

The County Commission has submitted a written application to the Ethics Commission for an exemption from subsection 6B-2-5(d)(1) which prohibits a public official from having more than a limited interest in the profits or benefits of a public contract. The County Commission has based its request for an exemption on excessive costs.

To substantiate this request the County Commission has provided the Ethics Commission with an Affidavit which states that the County Commission considered all County-owned facilities to ascertain whether sufficient space was available or could be made available to accommodate the office needs of the Prosecuting Attorney. As a result of this consideration the County believes that there is

insufficient county owned space available for use by the Prosecuting Attorney.

The County Commission is presently preparing and setting the 1990-1991 budget for the County and finds that even if such space were available to accommodate the Prosecutor's office needs, County funds are not presently available to pay for equipment, furniture and supplies for such offices or to pay renovation costs thereof. The Commission anticipates that such funds will not be available through the 1993 fiscal year.

A second affidavit has been submitted by the County Commission from a licensed real estate agent in the County who has been practicing for more than thirty years. The real estate agent made inquiries to determine the availability of ground level office space and facilities for the County Commission and the approximate cost thereof. It is the agent's opinion that the approximate cost for such office space and facilities, including utilities and insurance as currently being provided, would be in the amount of \$750 to \$800 dollars per month.

Lastly, the Commission received an affidavit from a real estate agent who has been actively engaged in a realty business for twenty five years. This agent is familiar with the rental costs of office space and facilities for professional use. Based on this agent's experience and in his opinion, the costs for such space including utilities is in the amount of \$8 to \$9 per square foot per year (\$8,560 per year or approximately \$713.33 per month).

The requestor has also based his request for an exemption on substantial interference since each Prosecutor has certain designated duties and responsibilities. These duties are performed between the hours of 8:00 a.m. and 5:00 p.m. The Prosecutors now meet with law enforcement officers, victims of crime, witnesses, etc., at any time during that period. However, the scheduling would be seriously restricted if the County Prosecutors were forced to schedule these interviews at another location.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no elected public official...or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which such official or employee may have direct authority to enter into, or over which he or she may have control...

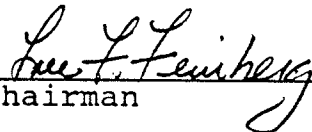
West Virginia Code Section 6B-2-5(d)(3) states in pertinent part that...where the provisions of this subsection would result in...excessive cost...or other substantial interference with the operation of a...county...or other governmental agency, the affected governmental body or agency may make a written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

ADVISORY OPINION

It is the Ethics Commission's opinion that the County Commission has fulfilled the requirements to satisfactorily show that excessive costs would result if the exemption for subsection 6B-2-5(d)(1) is not granted. The County Commission does not have the space and facilities available to accommodate the needs of the Prosecutor's office. The Affidavits clearly establish that other similar space would result in higher rental fees and excessive costs to the County.

The Ethics Commission would commend the County Commission on the thoroughness of preparing the documented proof to substantiate the basis for their exemption and would encourage other potential requestors to use such a format.

Therefore, pursuant to subsection 6B-2-5(d)(3) of the Act, the Ethics Commission hereby grants the requested exemption.


Chairman