

ADVISORY OPINION NO. 90-157
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON OCTOBER 4, 1990

GOVERNMENTAL BODY SEEKING OPINION

A County Sheriff

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a part-time County Sheriff to be employed as a consultant by a private firm?

OTHER FACTS RELIED UPON BY THE COMMISSION

The requestor states that he is a part-time County Sheriff since his county has four or fewer deputies. The Sheriff has been offered a position as a consultant with a Resident Care Facility within the County. The position was offered to him by a private firm which is contracting with the State to operate a care facility for mentally retarded children.

The consultant position would be part-time and his responsibilities would include vehicle and employee identification, periodic checking of the institution, meeting with the administration in an advisory capacity to address security needs and meeting with the staff support employees to determine their needs.

The County Sheriff does exercise policymaking, nonministerial and regulatory authority. However, the Sheriff is a part-time public official and his Department does not regulate the Resident Care Facility. However, the requestor states that the Department has been summoned on occasion to investigate crimes which have occurred at the facility.

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...may not knowingly and intentionally use his...office or the prestige of his...office for his...own private gain...

West Virginia Code 6B-2-5(h)(1) states that no full-time public official...who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow himself...to be employed by any person who is or may be regulated by the governmental body which he...serves while he...serves in the governmental agency. The term "employment" within the meaning of this section includes professional services and other services rendered by the public official..whether rendered as an employee or as an independent contractor.

West Virginia Code §6-3-1 states in pertinent part that...a sheriff in any county in which there are four or fewer deputies...need not devote his full time to the services or duties of his office as sheriff...but any such sheriff...shall not engage in any business or transaction, accept other employment or make any investment which is otherwise prohibited by law or which will impair his independence of judgment in the exercise of, or might reasonably tend to conflict with the proper discharge of the services or duties of his office as sheriff...

ADVISORY OPINION

Part-time Employment

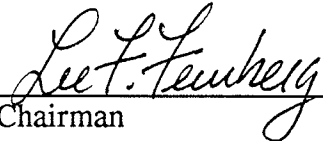
The Commission finds that the County Sheriff is a part-time public official. Pursuant to subsection 6B-2-5(h)(1) of the Ethics Act, the prohibition against seeking employment with persons regulated by the requestor's public agency applies only to employees or officials holding full-time public positions.

Therefore, the Commission finds that it would not be a violation of subsection 6B-2-5(h)(1) of the Ethics Act for a County Sheriff to be employed on a consultant basis with a resident care facility, since his public position as a County Sheriff is considered part-time.

The Commission would note that pursuant to West Virginia Code §6-3-1 a sheriff in any county in which there are four or fewer deputies is considered part-time. However, that code provision states that a part-time sheriff may not engage in any business, transaction or accept any employment which may impair his independence of judgment in the exercise of, or might reasonably tend to conflict with the proper discharge of the services or duties of his office as sheriff.

Private Gain

However, the Sheriff should be mindful of subsection 6B-2-5(b)(1) of the Ethics Act which prohibits a public official from using his office or the prestige of his office for private gain. For example, the requestor may not intentionally and knowingly use his public position as the County Sheriff to gain employment as a consultant for the Resident Health Care facility.


Chairman