

ADVISORY OPINION NO. 89-74

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 4, 1990

GOVERNMENTAL BODY SEEKING OPINION

A County Commissioner

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a County Commission to employ a State Delegate to act as a consultant?

OTHER FACTS RELIED UPON BY THE COMMISSION

Prior to the consultant's appointment by the Governor as a Delegate, the County Commission executed a contract with the consultant to provide consulting services for the County with the United States Corps of Engineers.

The consultant by virtue of her expertise and personal contacts, is the only individual in the area capable of providing the County with the technical assistance necessary to secure extensive flood protection. Another County Commission will also receive the benefit of the Delegate's expertise and work as well.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

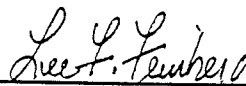
West Virginia Code 6B-2-5(d)(1) states in pertinent part that no elected or appointed public official...may be a party to or have an interest in the profits or benefits of a contract with the governmental body over which he or she has direct authority or with which he or she is employed...Provided...nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body.

West Virginia Code 6B-2-5(b)(1) states in pertinent part 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...

ADVISORY OPINION

An analysis of the facts presented and pertinent statutory provisions follows:

1. The second proviso in Subsection 5(d)(1) of the Act provides that the Act shall not be construed to prohibit a Legislator from entering into a contract with any governmental body.
2. Therefore, it is not a violation of subsection (d)(1) for the Delegate to contract with the County Commission to act as a consultant.
3. Also, subsection (b)(1) requires the Legislator not to intentionally use the prestige of her office for her or another's private gain.
4. The Legislator should be mindful that nothing in this opinion shall be construed to state that other provisions in the Act such as subsection 5(e) are not applicable, should a violation become evident to this Commission.
5. Therefore, the Legislator (consultant) should be careful not to reveal any confidential information acquired by her as a result of her committee work or other functions to further her or her business' interests.



Chairman