

ADVISORY OPINION NO. 89-80

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 4, 1990

GOVERNMENTAL BODY SEEKING OPINION

A County Deputy Sheriff

OPINION SOUGHT

Whether it would be a violation of the Ethics Act if a Deputy Sheriff were to make unnecessary arrests and perform other actions with the intent to receive a monetary bonus paid from County funds?

OTHER FACTS RELIED UPON BY THE COMMISSION

The County Sheriff has set up a point/bonus system for the Deputy Sheriffs of the County which provides for a monetary bonus based on the number of arrests the Deputy makes, number of complaints, and the number of civil papers each Deputy files. This system may have encouraged some deputies to make unnecessary arrests throughout the 1989 fiscal year.

This monetary bonus system is in addition to the hourly wage being paid to the Deputy by the County and will be paid in January 1990.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(b)(1) states that a 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. The performance of usual and customary constituent services, without compensation, does not constitute the use of prestige of office for private gain.

ADVISORY OPINION

An analysis of the pertinent facts and statutory provision of (b)(1) follows:

1. A Deputy Sheriff is a public employee and is not permitted to intentionally use his office for private gain.
2. Given the facts presented the Deputy Sheriff could be encouraged to use his position to make unnecessary arrests, file complaints, seek the business of serving civil subpoenas and summons on individuals with the intent of obtaining private monetary gain.
3. The Deputy Sheriff as a part of his position has a legal obligation and duty to make arrests and carry out other functions of his office. These services are included in and part of his employment.
4. Although, the system is not per se' unethical under the Act it could very easily give rise to the appearance that an employee (Deputy Sheriff) was intentionally using his office with the intent of obtaining private gain as prohibited by subsection (b)(1).
5. Therefore, the Deputy Sheriff should be mindful not to intentionally use his office or prestige by making unnecessary arrests or taking other actions with the intent of receiving private gain.

Lue F. Teuberg  
Chairman