ADVISORY OPINION NO. 2013-34

Issued on August 1, 2013 By the

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Sheriff's Tax Deputy** asks if he may provide security services to residents and law enforcement throughout the State through a limited liability company.

FACTS RELIED UPON BY THE COMMISSION

A Sheriff's Tax Deputy would like to form a limited liability company (LLC) to provide security guard services, home security cameras, sensors, and related electronic devices, and to provide open source intelligence analysis training to the city, county, and state law enforcement entities within West Virginia.

The Requester states that he will provide the services free of charge to his County Sheriff's Department, but that other law enforcement entities within his county would be charged the standard rates.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code§ 6B-2-5(b) reads in relevant part:

> 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(d)(1) provides in part that no public employee or business with which s/he is associated may be a party to or have an interest in a contract which such employee may have direct authority to enter into, or over which s/he may have control.

W. Va. Code§ 6B-2-5(0) reads, in relevant part:

> Except as provided in this section, a person who is a public official ... may not solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control. A person who is a public official ... may solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control when:
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> (A) The solicitation is a general solicitation directed to the public at large through the mailing or other means of distribution of a letter, pamphlet, handbill, circular or other written or printed media; or

(B) The solicitation is limited to the posting of a notice in a communal work area; or
(C) The solicitation is for the sale of property of a kind that the person is not regularly engaged in selling; or
(D) The solicitation is made at the location of a private business owned or operated by the person to which the subordinate public official or public employee has come on his or her own initiative.

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Pursuant to W. Va. Code§ 6B-2-5(d)(1), a public employee may not have more than a limited interest in the profits or benefits of a public contract over which s/he has direct authority or control.

In Advisory Opinion 2010-24, the Ethics Commission found that a Chief Tax Deputy does not exercise control over County Board of Education contracts for purposes of the Ethics Act nor is she subject to§ 61-10-15.[1] Here, the Commission finds that a Tax Deputy does not exercise control over contracts within the Sheriff's Department.

As a result, the Requester may provide security services to residents and law enforcement throughout the State through a limited liability company. Limitations apply. The Requester has stated that he would provide his services to the Sheriff's Department free of charge. The Requester is prohibited from charging for any goods or services that he, or the LLC, provides to **any** government agencies within his County.

Additionally, the Requester may not use more than a *de minimis* amount of public resources for private purposes. Specifically, he may not use office equipment, office supplies or office space for the benefit of his private company. Further, he may not use subordinate staff to perform work associated with his private business while the subordinates are on the government time clock.[2]

Next, W. Va. Code§ 6B-2-5(0) prohibits a public official from soliciting private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control, with certain exceptions.

Also, the Commission finds that the Requester may not distribute business cards, flyers, or other promotional materials concerning his private business from his office and/or in the County Courthouse. Notwithstanding the express provisions of W. Va. Code§ 6B-2-5(o)(B), under these specific circumstances, the Commission believes it would create

[1] See Advisory Opinion 2013-15 for an analysis of the distinction between a tax deputy and a law enforcement deputy.
[2] Before using subordinate staff to perform work associated with his private company, the Requester should contact the Ethics Commission to determine whether such a work arrangement is permissible under the Ethics Act.

an appearance of impropriety for an employee of the Sheriff's Department to promote his private security services at his place of public employment.

Finally, the Requester must recuse himself from the handling of delinquent tax payers accounts for any current or prospective customers of his private business.

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. In accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked, or the law is changed.

/s/ Jonathan E. Turak
Jonathan E. Turak, Acting Chairperson