

ADVISORY OPINION NO. 96-17

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MAY 2, 1996

PUBLIC SERVANT SEEKING OPINION

County Commissioner

OPINION SOUGHT

Is it a violation of the Ethics Act for the law partner of a County Commissioner to conduct legal work for a Public Service District?

FACTS RELIED UPON BY THE COMMISSION

The requester is a member of the County Commission. The County Commission exercises some direct authority over the Public Service District. For example, the County Commission creates the district, defines its geographical boundary, appoints members to the Board, provides some funding and approves certain expenditures.

A County Commissioner is also a partner (Partner A) in a law firm. Prior to his service on the County Commission he began legal work for a Public Service District. He immediately ceased this work when he was appointed to serve on the Commission. In Advisory Opinion 90-11 the Ethics Commission held that the County Commissioner's law partner (Partner B) could complete the work for the PSD on an individual basis outside the law firm. This ruling was made before the Ethics Commission was given the authority to issue advisory opinions as to whether specific conduct was a violation of WV Code 61-10-15.

Pursuant to Advisory Opinion 90-11, Partner B completed the work on an individual basis outside of his involvement with the County Commissioner's law firm.

The Public Service district now has a need for additional legal work. The PSD would like to continue to contract with Partner B, again in his individual capacity outside of the law firm, since it prefers to work with counsel with whom it is familiar.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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

West Virginia Code 6B-2-5(e) provides in pertinent part that...No present or former public official or public employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interest of another person.

West Virginia Code 61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member he may have any voice, influence or control.

ADVISORY OPINION

The Ethics Act

In considering this request, the Ethics Commission has analyzed the facts presented in light of the statutory violations contained in the Ethics Act. The Commission has determined that there is no provision of the Ethics Act which would prohibit a private attorney from performing, outside of his law firm, legal work for a PSD located in the same county where his law partner serves as a County Commissioner.

However, the requester should be mindful of West Virginia Code 6B-2-5(b)(1) which provides that a public official may not use his office or its resulting prestige for personal private gain or for the private gain of another. Consequently, the requester may not use his position as a member of the County Commission to improperly influence, obtain, increase or promote the interests of the partner in his private law firm.

Further, the requester should be mindful of WV Code 6B-2-5(e) which prohibits a public official from either disclosing confidential information acquired by him in the course of his official public duties or using such information to further his personal interests or the interests of another person.

West Virginia Code 61-10-15

West Virginia Code 61-10-15 provides that it is a criminal violation for any county officer to have a direct or indirect financial interest in the proceeds of any contract if he has voice, influence or control over the letting of such contract. Any person who violates this provision is guilty of a misdemeanor and subject to removal from office. The Commission is without authority to grant exemptions from this provision.

In Advisory Opinion No. 93-05 the Ethics Commission found that the power of a County Commission to appoint members to a PSD and the broad discretion which County Commissions exert over PSDs pursuant to WV Code 16-13A-2 was sufficient to give a member of that County Commission voice, influence and control over the public contracts of a PSD in that County.

Pursuant to Advisory Opinion 93-05, the County Commissioner (Partner A) may have voice, influence or control over the PSD's contract for legal services. However, a violation of WV Code 61-10-15 would not occur if he has no direct or indirect financial interest in that contract. In this case the contract is between the PSD and Partner B who would contract with the PSD as an individual, independent of the private law firm.

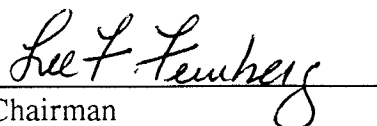
The facts do not indicate clearly whether the County Commissioner or his private law firm will incur any financial gain from the project. Provided there is no direct **or indirect** benefit to the law firm or to the County Commissioner, then there would not be a violation of WV Code 61-10-15.

This opinion follows the precedent set at Advisory Opinions No. 94-02 and No. 95-47. In A.O. #94-02 the Ethics Commission ruled that a member of a County Airport Authority could broker a real estate purchase between the Authority and a private client by foregoing his entire fee, the sales commission and any other benefit to other members of his real estate agency. In A.O. #95-47 the Ethics Commission approved a PSD Board member's sale of water pumps to his PSD at cost plus freight since neither he nor his business would receive any financial or other benefit from such a sale.

Similarly, it would not be a violation of WV Code 61-10-15 if the County Commissioner's law partner performed work for a PSD located in that County **provided** such work is conducted on an independent basis, outside the private law firm.

This opinion is based upon the assumption that there will be no direct **or indirect** benefit to the law firm or to the County Commissioner (Partner A). The parties must take every precaution to ensure that even a benefit of goodwill does not accrue to the firm. For example, Partner B should not use firm stationary or any other resources which would identify or associate this work with the firm. Further, payments to Partner B for these services may not be used in any manner to affect the apportionment of firm income among its partners, associates and employees.

The Commission notes that any person acting in good faith reliance upon an advisory opinion shall be immune from the sanctions of WV Code 61-10-15 and shall have an absolute defense to any criminal prosecution for any actions taken in good faith reliance upon the opinion.


Chairman