ADVISORY OPINION NO. 2012-15

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WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Sheriff** asks whether he may endorse his Chief Deputy or another candidate for public office, and whether he may pay for a campaign advertisement to run in local media in support of his Chief Deputy or another candidate for public office during his own term of office.

FACTS RELIED UPON BY THE COMMISSION

The Requester is an elected county sheriff who would like to support his Chief Deputy and/or other candidates for public office while still serving as Sheriff. Specifically, he would like to use his public title to endorse candidates. Additionally, he wants to run ads, either in the local newspaper, or on the local radio stations, or both, supporting or endorsing his Chief Deputy and/or other candidates for public office.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code§ 6B-2-5(b)(1) reads:

> 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. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

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In establishing the Ethics Act, the Legislature sought to maintain the public's confidence in the impartiality and independence of decisions and actions by public officials and employees, and to ensure that all such decisions be made free of undue influence, favoritism or threat at all levels of government. W. Va. Code§ 6B-1-2(a).

The Ethics Act's prohibition against use of office for private gain was designed to steer public servants away from inherently questionable situations. This prohibition is

intended to prevent not only actual impropriety, but also situations that give the appearance of impropriety.

Over the years, the Ethics Commission has had limited opportunities to address whether use of public resources for political purposes violates the Ethics Act. Most recently, in Advisory Opinion 2000-04, a county school board member asked if the Board may provide a direct link between the Board's Internet website and the Member's own, educationally oriented, private website. The Ethics Commission stated:

> The Commission finds that the link from the Board Site to the Member's Personal Site, which existed before his current reelection campaign, is not a violation of the Ethics Act and the offer of a direct link from Personal Site to the Campaign Site is merely an option which a visitor to the site may choose to accept or ignore. Assuming a similar opportunity is offered all candidates, any advantage the link from the Board Site to the Personal Site provides the Member would be *de minimis* and not a violation of the Ethics Act.

In companion opinions in 1998, the Ethics Commission ruled that a sheriff who was a candidate for public office would not violate the Ethics Act by engaging in limited campaign activities while using the official cruiser in the course of carrying out his normal daily duties. He was prohibited, however, from:

- transporting campaign signs/banners;
- transporting campaign supporters;
- transporting other candidates for public office, including his wife; or
- canvassing streets or neighborhoods for support.

See Advisory Opinions 98-09 and 98-11.

In Advisory Opinion 95-37, the Ethics Commission ruled that an Assistant Prosecuting Attorney could: serve as campaign treasurer for a candidate for public office on his own time without using public resources; directly solicit campaign contributions, and host fundraising events for a candidate, without violating the Ethics Act. The Commission wrote:

> The donation of, accounting for, and spending of campaign contributions, as well as the political activities of public servants are all regulated by the Legislature in detail elsewhere in the WV Code. (See WV Code 3-8-1 et. seq. and WV Code 29-6-20) This fact, along with the exclusion of political contributions from the Ethics Act definition of a "thing of value", leads the Commission to conclude that it was not the intent of the Legislature to regulate or limit the solicitation of political campaign contributions in WV Code 6B-2-5(c)(1).

Earlier, in Advisory Opinion 95-34, the Ethics Commission answered a number of questions regarding what constitutes permissible use of public resources in political campaigns. There, the Commission ruled that it does not violate the Ethics Act's

prohibition against use of office for private gain for a public official to: use a *de minimis* amount of public resources, including his public title, to publicly endorse or support a candidate for public office; sponsor receptions to meet the candidate; and advocate publicly the candidate's views.

In reaching this conclusion, the Commission noted:

> Incumbent public officials have a legitimate interest in attempting to safeguard and perpetuate public policies and programs they have worked to establish or maintain. Endorsing candidates for office who share that goal can be considered a part of the First Amendment Rights of an officeholder. In addition, although the official endorsement of an incumbent public official may have substantial "political" value, such an endorsement does not create the type of private gain contemplated by the Act's prohibition against the use of office for private gain.

Here, it is unclear whether the Requester is an incumbent. Nonetheless, the same analysis applies. Thus, the Commission hereby finds that nothing in the Ethics Act prohibits the Requester from using his public title generally to endorse his Chief Deputy or any other candidate for public office. Specifically, the Commission finds that the Ethics Act does not prohibit the Requester from using his public title to endorse his Chief Deputy or any other candidate for public office through newspaper advertisements or radio announcements. He may not, however, spend public funds for these purposes.

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. This opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, it may alter the analysis and render this opinion invalid. 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 servants unless and until it is amended or revoked, or the law is changed.

/s/ R. Kemp Morton, Chairman
Kemp Morton, Chairman