

# Advisory Opinion 2022-21

Issued on December 1, 2022, by

The West Virginia Ethics Commission

## Opinion Sought

A **State Legislator** asks whether he may serve as legal counsel, through a law firm that employs him, to a county clerk's office located within his legislative district.

## Facts Relied Upon by the Commission

A county clerk's office recently asked the Requester, who is a state legislator and a licensed attorney, to serve as the office's legal counsel. The county clerk's office is located in the Requester's legislative district. The Requester states that his role would be to advise the office on general legal matters within the jurisdiction of the county clerk's official duties.

The Requester is employed by a law firm. He does not hold an ownership interest in the firm. The county clerk's office will be engaging the law firm to provide the requested legal services, and the Requester will undertake the primary responsibility for this representation with assistance from other lawyers in the law firm as needed.<sup>1</sup>

## Provisions Relied Upon by the Commission

W. Va. Code § 6B-2-5(b) states, 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. 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.

---

<sup>1</sup> The Requester states that he will not be providing legal services to the county commission. However, as noted below, the legal analysis is the same regardless of whether he or his law firm provides legal services to the county clerk's office or county commission.

W. Va. Code § 6B-2-5(d)(1) states, in relevant part:

In addition to the provisions of § 61-10-15 of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control: *Provided*, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: *Provided*, however, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body . . . when the official has not participated in the review or evaluation thereof, has been recused from deciding or evaluating and has been excused from voting on the contract and has fully disclosed the extent of his or her interest in the contract.

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

(1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to purchase, sell or lease real or personal property to or from any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding 12 months; or

(B) Has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working.

. . . .

(2) Within the meaning of this section, the term “employment” includes professional services and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor . . . .

### **Advisory Opinion**

In general, the Ethics Act does not prohibit state legislators from employment by or contracting with any public agency or private entities in the state. For example, in Advisory Opinion 2015-01, the Ethics Commission held that a legislator may continue his employment during the legislative session as an attorney with a company that employs registered lobbyists when the legal services he provides are unrelated to the company’s lobbying activities. See also Advisory Opinion 1989-42 (finding that a legislator may accept court-appointed cases); Advisory Opinion 1997-21 (holding that a legislator may be employed by a private institute to teach a course on the legislative process); Advisory Opinion 1990-28 (finding that a legislator may serve on a public service district, library board, and economic development authority); Advisory Opinion

1992-07 (holding that a legislator may serve on a solid waste authority). The fact that the Requester's employer is contracting with a county office within his legislative district does not change the analysis and conclusions in these Opinions.

Furthermore, the public contract restrictions in the Ethics Act, at W. Va. Code § 6B-2-5(d)(1), do not prohibit the Requester from contracting with a county clerk's office, or any county office, because the Requester, through his legislative position, does not exercise authority or control over county contracts. Even if he did, an exception to the public contract restrictions in the Ethics Act allows members of the Legislature to enter into a contract with any governmental body when he or she does not participate in deciding, reviewing, or evaluating the contract. See Advisory Opinion 1990-105 (legislator may contract with any branch of state government); Advisory Opinion 1995-23 (legislator may have a contract with a state agency, subject to not using his or her office for private gain).

Finally, W. Va. Code § 6B-2-5(h)(1), which prohibits public officials from seeking employment from regulated persons and vendors, does not apply here. W. Va. Code § 6B-2-5(h)(1) prohibits only full-time public officials from seeking employment with regulated persons and vendors. Legislators are part-time officials.<sup>2</sup> See *also* Advisory Opinion 1989-21. Furthermore, this provision does not prohibit public officials from seeking employment, being employed, or contracting with other governmental agencies. *E.g.*, Advisory Opinion 1991-54; Advisory Opinion 1992-07.

**Therefore, the Ethics Commission holds that the Ethics Act does not prohibit a State Legislator from being employed by or contracting with, either directly or through a law firm that employs him, a county clerk's office which is located within the Legislator's legislative district.**

While nothing in the Ethics Act prohibits a State Legislator from being employed by or contracting with another government agency, the Commission does not have authority to determine whether other laws, including the West Virginia Constitution and the Rules of Professional Conduct, restrict or prohibit it.

*This Advisory Opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester must contact the Ethics Commission for further advice as it may alter the analysis and render this Opinion invalid. This Advisory Opinion is limited to questions arising under the Ethics Act, W. Va. Code §§ 6B-1-1 through 6B-3-11, and does not purport to interpret other laws or rules.*

---

<sup>2</sup> Even if Legislators were considered full-time officials, W. Va. Code § 6B-2-5(h) would not apply because the Legislature does not regulate county clerk offices. See [Advisory Opinion 1992-07](#).

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

/s/ Terry L. Walker  
Terry L. Walker, Acting Chairperson  
West Virginia Ethics Commission