

ADVISORY OPINION NO. 89-28

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON NOVEMBER 2, 1989

GOVERNMENTAL BODY SEEKING OPINION

The _____ County Commission and _____, Prosecuting
Attorney of _____ County

Opinion Sought

Exemption is being sought from WV Code Section 6B-2-5(d)(3) for the rental of office space for the Prosecuting Attorney.

Other Facts Relied Upon By The Commission

The Prosecuting Attorney is a partner of a law firm and is also 50% general partner of the Associates which now owns the building and leases office space to the law offices.

The county commission wishes to lease rental space from the Associates for the office of the County Prosecuting Attorney at the rate of \$300.00 per month.

The office of Prosecuting Attorney is part time. The County Commission must provide reasonable and adequate office space for the prosecutor.

Currently, the County Commission does not have available office space suitable for the prosecuting attorney's office.

The \$300.00 rental rate includes:

- A) office/receiving room
- B) part-time prosecuting attorney's office
- C) furniture for prosecuting attorney's office provided by the law firm
- D) secretary's office/receiving room partially furnished by the law firm
- E) access and use of the law library
- F) access to and use of two conference rooms
- G) access to and use of three additional telephone lines
- H) access to and use of a FAX machine
- I) access to and use of a kitchen
- J) access to and use of a restroom facility
- K) access to and use of an additional receiving room and receptionist to take overflow calls; and/or to take calls when the secretary or prosecuting attorney is not readily available in said office.

Statutory Provisions Relied Upon by the Commission

West Virginia Code Section 6B-2-5(d)(1) states in part that no elected public official... 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 with the governmental body over which he or she has direct authority or with which he or she is employed.

West Virginia Code Section 6B-2-5(d)(3) allows the affected agency to make written application for an exemption to the above subsection when it would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency.

EXEMPTION:

It is the Commission's finding that the individual has not set forth the requisite criteria under subsection 5(d)(3) for an exemption to be granted at this time.

The request states that the Co. Commission does not have available alternate general office space suitable for the prosecuting attorney's office, yet there is no evidence to suggest that contained in the request. It must be shown to the Commission that other similar space would result in excessive cost or other undue hardship. The Commission is not entirely persuaded that undue hardship or other "substantial interference" has been shown by the requestor's statement that because of the location in relation to his private practice he would be more readily available as needed to perform prosecutorial duties than if located in another more distant structure. Convenience is not identified in the statute as a reason for granting an exemption.

Specifically, there has been no showing that refusal to allow the County Commission to obtain rental space from the Prosecutor's business would result in excessive cost, undue hardship, or other substantial interference with the operation of the Prosecuting Attorney's office or other affected governmental body.


Chairman