

ADVISORY OPINION 89-63

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 7, 1989

GOVERNMENTAL BODY SEEKING OPINION

County Commissioner

OPINION SOUGHT

1. Whether a county commissioner should be permitted under the Ethics Act to receive a stipend or honorarium for speaking engagements or acting as the toastmaster at banquets?
2. Whether a county commissioner should be permitted under the Ethics Act to provide motivational speaking for a fee?

OTHER FACTS RELIED UPON BY THE COMMISSION

The County Commissioner is also a Sports Director of a radio station in West Virginia. He has maintained this position for the past 35 years. Serving in this capacity, he is often called upon to be the speaker/toastmaster at many banquets both sports oriented and otherwise. He generally does receive an unsolicited stipend for such services. He has made this a practice for the past 25 years.

In addition, the Commissioner provides motivational speaking to vocational education groups, fund raising banquets, medical society groups, sales staffs, supervisory staff, and others. He generally charges \$300-\$500 per engagement. He has actively pursued this for the last five years. He is employed because of his talent as a "radio personality" and public speaker. He is never engaged to speak on political issues or his position as County Commissioner.

STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(b)(1) states in pertinent part... a public official may not 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. The performance of usual and customary constituent services, without compensation, does not constitute the use of prestige of office for private gain.

West Virginia Code Section 6B-2-5(b)(2) states in pertinent part that...the Legislature...recognizes that there may be certain public officials or public employees who bring to their respective offices or employment their own unique personal prestige which is based upon their intelligence, education, experience, skills and

abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. Such persons may, in fact, be sought by the state to serve in their office or employment because, through their unusual gifts or traits, they bring stature and recognition to their office or employment and to the state itself. While the office or employment held or to be held by such persons may have its own inherent prestige, it would be unfair to such individuals and against the best interests of the citizens of this state to deny such persons the right to hold public office or be publicly employed on the grounds that they would, in addition to the emoluments of their office or employment, be in a position to benefit financially from the personal prestige which otherwise inheres to them. Such exemptions may be granted by the commission, on a case by case basis, when it is shown that: (1) The public office held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state; (2) the office held or the employment engaged in is such that it normally or specifically required a person who possesses personal prestige; and (3) the person's employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.

West Virginia Code 6B-2-5(c)(3) states that the acceptance of an honorarium by an elected public official is prohibited. The commission shall, by legislative rule, establish guidelines for the acceptance of reasonable honorariums by all other public officials and public employees other than elected public officials.

West Virginia Code 6B-2-5(d)(1) states in pertinent part that... no elected or appointed public official 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 employee: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body...

ADVISORY OPINION

1. (Speaker/Toastmaster)

The Legislature specifically stated in subsection 6B-2-5(c)(3) that an elected official was prohibited from accepting an honorarium. Therefore, since the Commissioner is an elected public official he may not accept an unsolicited stipend or honorarium for his services as a toastmaster or speaker at a banquet.

2. (Motivational Speaking)

The Commissioner does not say in his request whether he contracts with his County commission or any specific county agency to provide motivational speaking for the fee. However, if he does, that in and

of itself would not be a violation since the first proviso in subsection (d)(1) provides that nothing shall be construed to prevent or make unlawful the employment of any person with any governmental body. Employment is defined in subsection 6B-2-5(h) to include professional services and other services rendered by the public official as an employee or independent contractor.

The next analysis centers on subsection (b)(1) which prohibits a public official from intentionally using his office or its prestige for his private gain. In preparing this opinion, the Commission has reviewed the public official's advertising brochure and is concerned that the official may be intentionally using his office to secure speaking contracts (i.e. private gain). However, it would appear from the facts presented that the commissioner is in fact selected because of his "radio personality" and his talents as a public speaker. However, public officials should be mindful of intentionally using their office and prestige in advertisements for their private gain.

The Commissioner does not address political issues or matters that relate to his position as County Commissioner. Therefore, it is the Commission's finding that the Commissioner is not in violation of subsection (b)(1) of the Act and does not need to request an exemption pursuant to subsection (b)(2) of the Act.

Lee F. Fenberg

Chairman