

ADVISORY OPINION NO.89-98

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 4, 1990

GOVERNMENTAL BODY SEEKING OPINION

A clerk with a Court

OPINION SOUGHT

Whether it is a violation of the Act for a Clerk with a Court to also serve as an elected member of a County School Board?

OTHER FACTS RELIED UPON BY THE COMMISSION

The Clerk was appointed by the Judges to a Court in an administrative position. The Clerk is not involved in the decision-making process regarding claims brought before the Court. The Court considers various claims including actions brought against the State Board of Education by county school boards and other individuals in the county school systems including teachers, school service personnel, and vendors.

As a Clerk, she serves as administrator for the Court, which is composed of three part-time judges. There are nine staff members who serve the Court. The Clerk oversees the setting of dockets, filing of court papers, preparation of reports to the Legislature, drafting of bills, the proposing and managing of budgets for the Court of Claims and the Crime Victims Compensation Fund, the obtaining of grants from the Federal Department of Justice, and preparing opinions for the Court. The Clerk also appears before legislative committees to answer questions concerning bills being considered by the House and Senate.

The Clerk does not have policy-making authority. The Court establishes policies, which the Clerk is directed to carry out.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-1-2(c) states in pertinent part that...the state government and its many public bodies and local governments have many part-time public officials...serving in an elected capacity...and certain conflicts of interests are inherent...and do not...disqualify a public official...from the responsibility of voting or deciding a matter; however, when such a conflict becomes personal to a particular public official...such person should seek to be excused from voting, recused from deciding...a matter.

West Virginia Code 6B-2-5(b)(1) states in pertinent part that a public employee may not intentionally use his or her office or the

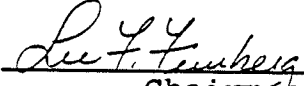
prestige of his or her office for his or her own private gain or that of another person...

ADVISORY OPINION

The Commission would note that its review of the appropriate statutory law is limited to the Ethics Act and there is no provision in the Act that speaks to or prohibits a public employee from holding an elected part-time public office.

However, the public employee should be mindful not to intentionally use her position or prestige as a Clerk of the Court for private gain in being elected as a County School Board member in violation of subsection (b)(1).

Also, subsection 6B-1-2(c) requires a part-time elected official disqualify herself from voting or deciding a particular matter when it becomes personal to that individual.



Chairman