

ADVISORY OPINION NO. 89-101

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 4, 1990

GOVERNMENTAL BODY SEEKING OPINION

A County Prosecuting Attorney

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a County Prosecuting Attorney to receive remuneration for acting as secretary for a Public Service District of a city?

OTHER FACTS RELIED UPON BY THE COMMISSION

The County Prosecuting Attorney represents the Public Service District of a city without compensation except for out-of-pocket expenses or costs. The Prosecutor has done this since he took office on January 1, 1989. Prior to that date, on occasion, when he acted as attorney for the District, he billed for legal services rendered and received payment.

Since the District was created more than 10 years ago, the prosecuting attorney has acted as secretary and has performed all the ministerial duties as such. For performing these services he presently receives \$100 per monthly meeting. As secretary he drafts and prepares minutes, and engages in some routine correspondence. Since he is secretary and not a member of the Board, he is not entitled to participate in any decision-making process, or approval and payment of invoices.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b)(1) states that a public official or 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.

West Virginia Code 6B-2-5(d)(1) states in pertinent part that no elected...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 employed...

ADVISORY OPINION

An analysis of the facts presented and the pertinent statutory provisions of West Virginia Code 6B-2-5(d)(1) follows:

1. The Prosecuting Attorney is an elected public official.
2. The Prosecuting Attorney has a public contract with a Public Service District to act as a secretary. The attorney receives \$100 per meeting for performing such ministerial services.
3. However, the public contract is not with a governmental body over which the Prosecuting Attorney has direct authority or is employed.
4. Therefore, it is not a violation of subsection (d)(1) of the Act for Prosecuting Attorney to receive remuneration for acting as secretary for a Public Service District.

Furthermore, there is no indication that the public official has intentionally used his office or prestige for his private gain in violation of subsection (b)(1). The Prosecuting Attorney acted as secretary prior to his being elected to his public office.

  
Chairman