

ADVISORY OPINION NO. 90-21

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 1, 1990

GOVERNMENTAL BODY SEEKING OPINION

Prosecuting Attorney for a County

OPINION SOUGHT

Whether it is a violation of the Ethics Act for an elected part-time Prosecuting Attorney, while acting in a private capacity, to be employed by an insurance carrier that insures some County officials?

OTHER FACTS RELIED UPON BY THE COMMISSION

In the past several years, the County has purchased liability insurance for the Sheriff from the National Sheriffs' Association.

The prosecuting attorney has been employed on occasion by an insurance company, which is responsible for insuring and representing the Sheriff and other County officials in civil rights actions. These lawsuits may be filed in State or Federal Court.

The insurance policy covers the liability of the County Official and requires that the insurance company provide a defense in civil lawsuits for the County officials. The fact that an insurance policy is issued eliminates the necessity of the Prosecuting Attorney (without compensation) defending the County officials and the County Treasury. Any liability must be paid by the insurance company, with the exception of the deductible amount.

The policy provides for a deductible sum, which must be paid by the County Commission in the event of a claim. The deductible amount usually covers expenses for investigations, processing and/or legal fees.

This individual has been the Prosecuting Attorney in this County for twenty-six years and has defended approximately ten to fifteen civil rights actions. The Prosecuting Attorney has been successful in almost every case. In the past the Prosecuting Attorney has been compensated by the insurance carrier for all legal services rendered.

The Sheriff is the one who selects the attorney who will represent him in any civil lawsuits, based on the attorney's qualifications. The Sheriff may or may not choose the Prosecuting Attorney. In any event, the selected attorney is subject to the approval of the Insurance Company.

#### PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b)(1) states in pertinent part that... a public official may not intentionally use his office or the prestige of his office for his own private gain or that of another person.

West Virginia Code 6B-2-5(h)(1) states in pertinent part that...no full-time public official who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow himself or herself to be employed by any person who is or may be regulated by the governmental body which he or she serves while he or she is employed or serves in the governmental agency. The term "employment" within the meaning of this section includes professional services and other services rendered by the public official or public employee whether rendered as an employee or as an independent contractor.

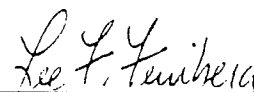
West Virginia Code 6B-2-5(d)(1) states in pertinent part that... no elected public official or a business with which he...is associated may be a party to or have an interest in the profits or benefits of a contract with the governmental body over which he or she has direct authority...

#### ADVISORY OPINION

It would not be a violation of subsection 5(h)(1) of the Act for the Prosecuting Attorney to be employed by the insurance company since this subsection only pertains to full-time officials and employees, and he is a part-time elected public official.

The Commission finds that it is not a violation of subsection 5(d)(1) of the Act because the Prosecuting Attorney is not employed by the Sheriff nor does he have any direct authority over the insurance company with which he contracts.

Although there are no facts before the Commission to suggest that this may be the case in this instance, the County Prosecutor should be mindful of subsection 5(b)(1) which provides that a public official may not intentionally use his office or the prestige of his office for his own personal gain.

  
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Chairman