

ADVISORY OPINION NO. 90-72

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MAY 3, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Part-time Prosecuting Attorney

OPINION SOUGHT

Whether it is a violation of the Act for a part-time prosecuting attorney to be privately retained by a State Department to provide title opinions for real estate which the Department seeks to acquire and to provide legal services for the Department during condemnation proceedings?

OTHER FACTS RELIED UPON BY THE COMMISSION

A part-time prosecuting attorney would like to be employed to represent a State Department, as a private attorney on a contract basis. His work would include providing title opinions for the state on tracts of land that the State seeks to acquire or condemn. Also, the requestor would contract to provide legal representation for the Department in condemnation proceedings.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

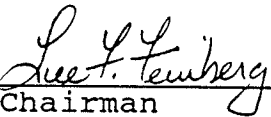
West Virginia Code Section 6B-2-5(b)(1) states that a public official...may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain...

West Virginia Code Section 6B-2-5(d)(1) states that no elected or appointed public official or public employee or member of his or her immediate family 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...

ADVISORY OPINION

The Commission finds that it would not be a violation of subsection 6B-2-5(d)(1) for a part-time prosecuting attorney to contract to provide legal services for a State Department, since the requestor has no direct authority over nor is employed by the State Department.

However, the requestor should be mindful of subsection 6B-2-5(b)(1) of the Act which prohibits a public official from using his personal prestige or the prestige of his office for his own private gain (i.e. using his position as a part-time prosecuting attorney to gain employment with the State Department).

  
Chairman