

ADVISORY OPINION NO. 94-23

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON SEPTEMBER 1, 1994

GOVERNMENTAL BODY SEEKING OPINION

A Municipal Judge

OPINION SOUGHT

Is it a violation of the Ethics Act for a municipal judge, or employees of his private company, to accept fees for real estate appraisals from the city?

Is it a violation of the Ethics Act for a municipal judge, or employees of his private company, to accept fees for real estate appraisals from third parties whose property may be subject to condemnation by the city?

FACTS RELIED UPON BY THE COMMISSION

The requester is a part-time municipal judge. He is also the president of a private company which specializes in commercial and industrial real estate. In the past either he or employees of his company have been contacted to provide independent real estate appraisal services to the City, its Urban Renewal Authority or its Sanitary Board.

Also, the requester's company has been approached by individuals who desire independent real estate appraisals of their property because they are negotiating with the city on possible sales of such property that might be subject to condemnation by the city. Such persons may employ a licensed or certified real estate appraiser to provide an appraisal.

The term "independent appraisal service" means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of identified real estate or identified real property.

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 knowingly and intentionally use his... office or the prestige of his...office for his...own private gain or that of another person...

West Virginia Code §6B-1-3(f) defines "Person" as an individual, corporation, business entity, labor union, association, firm, partnership, limited partnership, committee, club or other organization or group of persons irrespective of the denomination given such organization or group.

West Virginia Code §6B-2-5(g)(1) states in pertinent part that no elected or appointed public official...shall, during his...public service or public employment or for a period of six months after the termination of his...public service or public employment with a governmental entity authorized to hear contested cases or promulgate regulations, appear in a representative capacity before the governmental entity in which he...serves or served or is or was employed in the following matters...

(E) To influence the expenditure of public funds.

West Virginia Code §6B-2-5(g)(2) provides in pertinent part that as used in this subsection, "represent" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person...

West Virginia Code §37-14-24 states in pertinent part that...A client or employer may retain or employ a licensed or certified real estate appraiser to act as a disinterested third party in rendering an unbiased estimate or value or an unbiased analysis, opinion or conclusion...

The term "independent appraisal service" means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of identified real estate or identified real property...

ADVISORY OPINION

In considering this request the Ethics Commission has analyzed the facts presented in light of the statutory violations contained in the Ethics Act. The Commission has determined that there is no provision of the Ethics Act which per se prohibits the part time city judge from providing independent real estate appraisal service to the city, its subdivisions or third parties whose property may be subject to condemnation by the city.

Representation

Pursuant to WV Code §6B-2-5(g)(1) a public official may not appear in a representative capacity on behalf of any person before his governmental agency in an attempt to influence the expenditure of public funds. The term "person" is defined as an individual, corporation, business entity, labor union, association, firm, partnership, limited partnership, committee, club or other organization or group of persons.

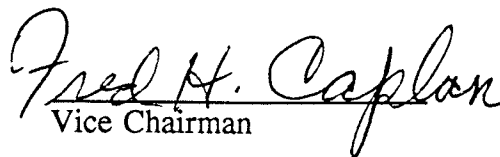
The definition of "person" as it is used in this section does not include governmental entities. Consequently, WV Code §6B-2-5(g)(1) would not prevent the part-time municipal judge or employees of his private firm from accepting fee assignments from the City or its subdivisions to conduct independent real estate appraisals.

Although the term "person" does include individuals, corporations or other groups of people, the requester inquires as to his ability to provide **independent** appraisal services. An appraiser hired to provide independent appraisals is retained to act as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of identified real estate or identified real property. The Commission has determined that such activities on behalf of a private party do not constitute "representation" of the person as that term is used in the Ethics Act.

Therefore, it would not be a violation of WV Code §6B-2-5(g)(1) for the requester, or employees of his private company, to accept fees to perform real estate appraisals from third parties whose property may be subject to condemnation by the city

Private Gain

West Virginia Code §6B-2-5(b)(1) provides that a public official may not use his office or its resulting prestige for his own private gain or the private gain of another. Consequently, the requester may not use his status or influence as a municipal judge to obtain, increase or promote his personal interests or the interests of his private realty company. Further, the requester may not use public time, equipment, materials and resources for such private activities.


Vice Chairman