

ADVISORY OPINION 95-08 - B
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON MAY 4, 1995

GOVERNMENTAL BODY SEEKING OPINION

A County Commission and a County Planning Commission

OPINION SOUGHT

- 1.) Is it a violation of the Ethics Act for a member of the County Planning Commission to appear, at no charge, in a representative capacity before the Planning Commission staff on behalf of another governmental agency?
- 2.) Is it a violation of the Ethics Act for a member of the Planning Commission to appear in a representative capacity before the Planning Commission staff on behalf of a project he has worked on for a fee?

FACTS RELIED UPON BY THE COMMISSION

1.) A County Planning Commission member who is also a licensed surveyor, has provided surveying services on a project for the County Parks and Recreation Commission at no charge. This project must now go before the County Planning Commission for review to determine whether it complies with all relevant planning and zoning regulations.

The review process involves submission of the proposed plans to the staff of the Planning Commission for their review and input. The review will involve a dialogue between the staff of the Planning Commission and the requester as the surveyor of the project. The requester would be expected to answer any questions regarding the project as proposed.

After the staff makes its recommendation to the full Planning Commission, the requester would not take part in the vote or discussion of the project by the Planning Commission members.

2.) The County Planning Commission member referred to above would also like to submit a proposal to provide services for a major project of the Parks and Recreation Commission. It is anticipated that he would receive compensation for these services.

Again the work would be submitted to the Planning Commission for review to determine whether it complies with all relevant planning and zoning regulations. It would be subject to evaluation by the Planning Commission's full time staff and the requester would appear before the staff to address any questions that might arise. The requester would not vote on the project when it comes before the full Planning Commission.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(g) provides in pertinent part that: (1) No elected or appointed public official and no full-time staff attorney or accountant shall, during his or her public service or public employment or for a period of six months after the termination of his or her 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 or she serves or served or is or was employed in the following matters:

- (A) A contested case involving an administrative sanction, action or refusal to act;
- (B) To support or oppose a proposed regulation;
- (C) To support or contest the issuance or denial of a license or permit;
- (D) A rate-making proceeding; and
- (E) To influence the expenditure of public funds.

West Virginia Code §6B-2-5(g)(2) provides 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...

ADVISORY OPINION

West Virginia Code §6B-2-5(g) provides that a public official may not appear in a representative capacity before the governmental entity in which he serves in regard to matters involving administrative sanctions or actions, proposed regulations, the issuance of a license or permit, rate-making proceedings, and the expenditure of public funds.

1.) A County Planning Commission member has provided surveying services on a project for the County Parks and Recreation Commission at no charge. This project must now go before the County Planning Commission for review. Although the requester will appear before the staff of the Planning Commission to discuss his work and answer any questions the staff may have regarding the project, the Ethics Commission finds that providing these services to the Parks and Recreation Commission does not constitute "representation" as that term is used in WV Code §6B-2-5(g).

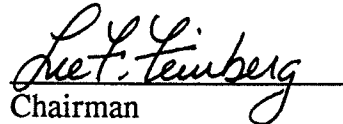
This determination is based upon the fact that the requester will receive no remuneration for either the actual surveying work or for appearing to discuss the project with staff. The Commission previously determined in Advisory Opinion #93-48 that the term "representation" as that term is used in WV Code §6B-2-5(g), refers to representation of a commercial nature and not an action which does not involve a fee for the service.

Therefore, it would not be a violation of the Ethics Act for the requester, who is a member of the County Planning Commission, to appear, at no charge, before the Planning Commission staff to discuss his work and answer any questions the staff may have regarding the project.

2.) The second question outlined in the request is based on similar facts with the sole difference being that the requester would receive compensation for the surveying work he would perform for the Parks and Recreation Commission.

In this scenario, the Commission finds that charging a fee for the surveying work establishes a financial interest in the project and, consequently, the requester would be acting in a "representative" capacity as that term is used in WV Code §6B-2-5(g).

Therefore, it would be a violation of the Ethics Act for the requester, who is a member of the County Planning Commission, to appear in a representative capacity before the Planning Commission staff on behalf of a project he has worked on for a fee.


Chairman