

ADVISORY OPINION NO. 96-43

Issued on September 5, 1996 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

City Councilman/School Counselor

OPINION SOUGHT

Is it a violation of the Ethics Act for a City Council member to submit a grant proposal which recommends that he be given monies for services rendered pursuant to the grant?

FACTS RELIED UPON BY THE COMMISSION

A City Council member who is employed full time as a school guidance counselor was asked by a State Agency to submit a grant proposal to continue funding for an intervention and prevention program for juveniles in the area. The program would be funded by a combination of public funding sources including the City Council, the School Board, the County Commission and the State Agency.

Having obtained the cooperation of the various local funding agencies, the requester prepared and submitted the grant application. None of this work was a part of his regular responsibilities as a member of City Council or as a School Counselor. The application was submitted on City letterhead, was signed by the requester as Deputy Mayor, and provided that the City would serve as fiscal agent for the grant. Acting at the suggestion of several community officials, the application designated the requester as the Project Director. It appears he is well qualified for the position.

The grant will provide for a payment to the Project Director of \$3,000 per year.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b)(1) states in pertinent part that...a public official or public employee 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 or that of another person. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

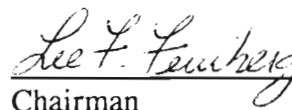
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West Virginia Code 6B-2-5(b) prohibits public servants from using their positions or the prestige of their positions for personal private gain or the private gain of another.

In Advisory Opinion 94-29 the Commission determined that it would be an improper use of public office for a public servant to initiate a contract with his public employer which would result in personal financial gain. In Advisory Opinion 95-11(Revised) the Commission followed that earlier precedent and held that a co-author of a grant proposal would also violate the Ethics Act's ban against use of office for private gain if she wrote and submitted a grant proposal or initiated a public contract which resulted in the hiring of her husband.

Several factors in this case persuade the Commission that this case is similar to the situations cited above. First, the requester submitted the grant proposal under the letterhead of the City and signed it in his official capacity as Deputy Mayor. Second, the requester also advocated and promoted the merits of the grant to the City Council and the School Board as well as the County Commission. In the first two forums he was an official or employee of the agency before which he advocated the merits of the project. While those advocacy efforts may not have been part of his official job responsibilities as council member or counselor, it is clear that his prestige from those positions gave him unique access to those agencies and could have played a significant role in persuading them to commit public funds to the project.

Since the grant named the requester as the project director and contains remuneration for his work in that position, the Commission finds that such an arrangement would constitute a violation of WV Code 6B-2-5(b). The Commission further finds that it does not fall within the exception for the uncompensated performance of usual and customary duties associated with the office or the advancement of public policy goals or constituent services.


Chairman