

ADVISORY OPINION NO. 98-09

Issued on April 2, 1998 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

A Sheriff

OPINION SOUGHT

Is it a violation of the Ethics Act if a County Sheriff uses his official vehicle for campaign purposes while on duty?

FACTS RELIED UPON BY THE COMMISSION

Pursuant to statute, a Sheriff must devote his full time to the performance of his duties as Sheriff and may not perform any other work for pay. The requester uses his official vehicle at all times of the year and carries a weapon at all times. Since he is now also a candidate, he engages in various campaign activities around the county at different times of the day. These appearances may involve attending candidate forums, putting up campaign signs, meeting with people to seek their support, etc.

The requester is concerned to establish whether continuing to use the official Sheriff's vehicle during the campaign period would violate the Ethics Act. During the time he is involved with campaigning, he pays all expenses, i.e. gasoline, oil, transmission fluid, wiper fluid, associated with the full-time use of the official vehicle.

He states that full-time use of the official vehicle assists him in fulfilling his responsibilities as sheriff since he is able to maintain contact with his office and field deputies in the event a crime or other emergency requires his attention.

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.

ADVISORY OPINION

This opinion deals with the extent to which a Sheriff may use his official patrol car when engaging in campaign activities. It is not intended to place any limits on how an elected Sheriff uses his time campaigning.

The Ethics Act prohibits public servants from using their public positions for their own private gain. It prohibits them from making personal use of the public supplies, equipment or personnel they control. While the Sheriff's use of the patrol car for personal travel does result in private gain to him, not all private gain is a violation of the Ethics Act.

West Virginia Code 7-7-16a authorizes County Sheriffs and their deputies to use their official vehicles to travel to and from their homes when the Sheriff determines that such use is directly connected to their duties and responsibilities. Clearly this type of personal travel would not violate the Ethics Act.

The Commission has found private gain to an individual is acceptable where it resulted from a transaction with an overriding, or greater, benefit to the public. For example, public servants may, consistent with the Ethics Act, allow agency vendors to pay their expenses for official travel. Because the principal benefit is to the agency, the incidental benefit to the public servant does not violate the Ethics Act.

If there is an overriding public benefit from the Sheriff's use of the patrol car for personal travel, then the private benefit to the Sheriff is not a violation. If the Sheriff's use of the patrol car for personal travel is part and parcel of performing his police work, it is not a prohibited use of office for private gain.

The Sheriff is the County's chief law enforcement officer. He routinely carries his service weapon and considers himself to be on duty at all times. He drives the radio-equipped patrol car for personal travel within his county, so that he can monitor and direct his agency's police activities and react to crimes committed in his presence.

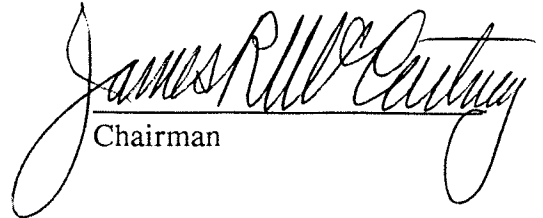
The Commission finds that the Sheriff's special law enforcement responsibilities legitimize his use of the car for most purely personal travel within the County. However, some personal uses of the car appear inconsistent with maintaining a law enforcement presence and those uses create an appearance of impropriety. The use of the car for campaign activity must be approached with caution, as its potential for creating an appearance of impropriety is considerable.

The Commission finds that it would not be a violation for the Sheriff to engage in limited campaigning activities while using the car in the course of carrying out his normal daily duties. "Gladhanding" while out and about in the patrol car is not a violation.

However, it would be a violation for the Sheriff to alter his normal daily duties to use the car for substantial campaign activities, or for him to use the car to carry out campaign activities after his normal duty hours. The Sheriff should not use the car for the following activities, regardless of the time of day or duty status:

- transport campaign signs/banners
- transport campaign supporters or other candidates
- canvass streets or neighborhoods for support

When the appearance of impropriety from such activities are taken into account, the public benefit from the Sheriff's use of the patrol car for such substantial campaign activities is not greater than his private benefit - the Sheriff, not the public, is the principal beneficiary.


Chairman