

ADVISORY OPINION 89-25

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 7, 1989

GOVERNMENTAL BODY SEEKING OPINION

President of a West Virginia Association

OPINION SOUGHT

Whether there is a conflict of interest if certain Senators, and a Delegate continue to serve as Directors of an Association.

OTHER FACTS RELIED UPON BY THE COMMISSION

Certain legislators are business owners and Directors of a West Virginia Association. These legislators do not appear before any legislative committee nor any other governmental agencies on behalf of the association. The President is a full-time lobbyist for the Association. Any contracts entered into on behalf of the Association provide only de minimis benefit to the legislators.

STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that a public official...may not intentionally use his office or the prestige of his office for his private gain or that of another person. The performance of usual and customary services, without compensation, does not constitute the use of prestige of office for private gain.

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part...that no elected...public official 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: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: Provided, however, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body.

West Virginia Code Section 6B-2-5(e) states in pertinent part that no present or former public official...may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

West Virginia Code Section 6B-2-5(g)(4) states that members and former members of the Legislature and professional employees and former professional employees of the Legislature shall be permitted to appear in a representative capacity on behalf of clients before any governmental agency of the state, or of county or municipal governments including county boards.

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Although the Association may have contracts with various agencies, departments, or branches of state government, the legislators and their businesses are not parties to these contracts and have no interest in the profits or benefits of such contracts other than the de minimis interest that any member of the Association would have. For these reasons, and based upon the facts submitted by the requesting party, the Commission finds no violation of West Virginia Code 6B-2-5(d)(1).

The Commission would note that legislators should be mindful not to knowingly and improperly disclose any confidential information acquired by them in the course of their official duties nor should they use such information to further their personal interests or another person's.

Additionally subsection (b)(1) of the Act prohibits public officials from using their office or the prestige of their office for their private gain or that of another person.



Chairman