

ADVISORY OPINION NO. 89-42

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 7, 1989

GOVERNMENTAL BODY SEEKING OPINION

A Legislator

OPINION SOUGHT

1. Whether it is a violation of the Act for a Legislator who is an attorney to accept court appointed cases?

2. Whether the Legislator's membership on certain Boards of Directors represents a violation of the Act?

OTHER FACTS RELIED UPON BY THE COMMISSION

The Legislator is on the Board of Directors of a community Mental Health Center. The Center is a private corporation that receives some state contracts and funding in regard to providing mental health services in southern West Virginia. The Legislator is also a member of the Board of Directors of a corporation which provides legal services to the poor.

The county that the Legislator resides in has a high unemployment rate. There is a high percentage of court appointments in criminal and other court proceedings. There are not many attorneys in this county who can accept court appointments for a variety of reasons.

The Legislator has previously written the Ethics Committee for the West Virginia State Bar and received an advisory letter from counsel for the State Bar that his representation for court appointed cases would not violate any professional standards of the State Bar.

During the last legislative session, the Legislator asked to be excused from voting on the budget bill because monies contained in the bill could be used to pay him for court appointed cases. The Speaker of the House did not excuse him from voting, and ruled that he was a member of a class of people who could benefit from the budget appropriations, and therefore, since there was no direct pecuniary interest, he was not excused from voting.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in pertinent part that no elected public official...may be a party to or have an interest in the profits or benefits of a contract with the governmental body over which he...has direct authority or with which he...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 6B-2-5(f) states no present or former elected or appointed public official or public employee shall during or after his or her public employment or service represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other specific matter which arose during his or her period of public service or employment and in which he or she personally participated in a decision-making, advisory or staff support capacity.

West Virginia Code 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 school boards.

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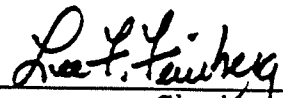
1. West Virginia Code Subsection 6B-2-5(d)(1) permits members of the Legislature to enter into contracts with any governmental body. The first proviso in that subsection specifically states that nothing herein shall be construed to prevent or make unlawful the employment of any person with a governmental body.

Furthermore, West Virginia Code Subsection 6B-2-5(g)(4) allows members of the Legislature to represent clients before any governmental body or agency.

However, the Legislator is cautioned to be mindful of the provisions of subsection 5(f) in that he should not act in a representative capacity in any contested case...or other specific matter which arose during his period of public service and in which he personally participated in a decision-making, advisory, or staff support capacity.

Therefore, it is the commission's opinion that it is not a violation of the Ethics Act for a Legislator who is an attorney to accept court appointed cases and be compensated from state funds.

2. The Legislator's membership on the Boards previously named does not appear to be a violation of the Act in and of itself.

  
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Chairman