

ADVISORY OPINION NO. 89-83

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 22, 1989

GOVERNMENTAL BODY SEEKING OPINION

President of a company

OPINION SOUGHT

Whether it is a violation for a Probation Officer of a particular County to act as a consultant and operational officer on a part-time basis for a company that contracts to provide services with Counties other than the one employing him?

OTHER FACTS RELIED UPON BY THE COMMISSION

A private company was formed and created for the purpose of providing "house arrest" monitoring services to federal, state, and local governmental agencies. The company was incorporated in 1989 under the laws of the State.

The Chief Probation Officer for a County would like to be employed by the company as a consultant and operational officer on a part-time basis.

However, the company does not contract to provide services with the County that employs the Probation Officer.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b)(1) states in pertinent part that...a public employee may not 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...

West Virginia Code 6B-2-5(d)(1) states that no...public employee ...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...with which he or she is employed...

West Virginia Code 6B-2-5(h)(1) states in pertinent part that no ...full-time public employee who exercises policymaking, nonministerial or regulatory authority may...allow himself...to be employed by any person who is or may be regulated by the governmental body which he...serves while he...is employed or serves in the governmental agency. The term "employment" within the meaning of this section includes professional services and other services rendered by the public official or public employee whether rendered as an employee or as an independent contractor.

West Virginia Code 6B-1-3(e) states that "ministerial functions" means actions or functions performed by an individual under a given state of facts in a prescribed manner in accordance with a mandate of legal authority, without regard to, or without the exercise of, such individual's own judgment as to the propriety of the action being taken.

ADVISORY OPINION

An analysis of the facts presented and pertinent statutory provision of West Virginia Code 6B-2-5(d)(1) follows:

1. The probation officer is a public employee, employed by a County to serve as Chief Probation Officer.
2. He has an undetermined interest at this time in the company which is currently contracting with certain governmental agencies.
3. Limited interest is described as an interest not exceeding ten percent of the outstanding shares of a company or thirty thousand dollars whichever is the lesser.
4. However, the business with which he is associated and has an interest in the benefits and profits is not currently contracting with the governmental agency by which he is employed.
5. Therefore, it would not constitute a violation of subsection (d)(1) for the Probation officer to act as a consultant or be otherwise employed for the company as long as the company continues to avoid conducting business or contracting with the County agency with which he is employed.

An analysis of the facts and pertinent statutory provisions of 6B-2-5(h) follows:

1. The public employee is a full-time employee who exercises some policy making, nonministerial or regulatory authority.
2. However, neither the Probation Officer nor his employer (that particular County) regulates the company for which he works.
3. Therefore, it is not a violation of subsection (h)(1) for the public employee to be employed by the Company on a part-time basis.

Additionally, the Probation Officer should be mindful of subsection (b)(1) which prohibits a public employee from intentionally using his office for his private gain or that of another.



Chairman