

ADVISORY OPINION NO. 90-89

ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION

ON JUNE 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Director of a State Department Division

OPINION SOUGHT

- a. Whether it is a violation of the Act for a public employee working as an inspector for a State Department to use his equipment to perform services for a neighbor who is not regulated by the Department?
- b. Whether it is a violation of the Act for a public employee working as an inspector for a State Department to perform services for an oil and gas company who is regulated by the Department?
- c. Whether it is a violation of the Act for a public employee working as an inspector for a State Department to perform part-time services for a regulated oil and gas company when his State Division regulates this work?

OTHER FACTS RELIED UPON BY THE COMMISSION

A State Department employs oil and gas inspectors who have cease and desist powers, assessment and violation issuance authority for construction, site building and reclamation projects.

One inspector owns a contract equipment and service company. This employee did construction work (i.e. install septic systems) for certain individuals who may be regulated by the State Department that employs him.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Subsection 6B-2-5(h)(1) states in pertinent part that...no full-time public employee who exercises policymaking, nonministerial or regulatory authority may seek employment with, or 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 employee whether rendered as an employee or as an independent contractor.

West Virginia Code Subsection 6B-2-5(h)(3) states in pertinent part that...a full-time public employee who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the prohibition against seeking employment with a person who is or may be regulated, when the person's education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency.

ADVISORY OPINION

a. It is the Commission's opinion that subsection 6B-2-5(h)(1) allows the inspector to be employed by individuals (such as his neighbor) who are not regulated by his Department.

Therefore, it would not be a violation of subsection 6B-2-5(h)(1) of the Act for the oil and gas inspector to contract to provide services with persons who are outside the scope of his Department's regulatory authority.

b. Pursuant to subsection 6B-2-5(h)(1), the Act specifically prohibits a public employee from being employed with any company which his Department regulates or may regulate. For the purpose of this section the term "employment" means any professional or other services rendered by the public employee whether rendered as an employee or as an independent contractor.

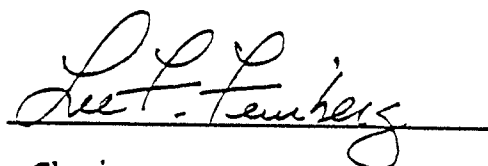
Therefore, it would be a violation of subsection 6B-2-5(h)(1) of the Act for the inspector as a full-time employee with nonministerial and regulatory authority to contract independently with any person or company which his Department may or does regulate regardless of the type of services performed.

c. As a State Department oil and gas inspector with non-ministerial and regulatory authority the public employee falls within the scope of Subsection 6B-2-5(h)(1) of the Act. This subsection prohibits a public employee with this authority from being employed with any person who is regulated or may be regulated by the governmental body which he serves while he is employed by that governmental agency.

For the purpose of this section "employment" is defined as professional services and other services rendered by the public employee whether rendered as an employee or as an independent contractor.

Therefore, it would be a violation of subsection 6B-2-5(h)(1) of the Act for a oil and gas inspector to independently contract to provide services with persons who are regulated by his governmental agency.

The Commission would note that subsection 6B-2-5(h)(3) of the Act provides that full-time public employees who would be adversely affected by the provisions of subsection 6B-2-5(h)(1) may apply to the Ethics Commission for an exemption. In order to receive the requested exemption the requestor must show that his education and experience is such that the prohibition against seeking outside employment with persons who are regulated or may be regulated by his governmental agency would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency.


Chairman