

ADVISORY OPINION NO. 90-150

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON SEPTEMBER 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Public Employee of a State Department

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a public employee to lease construction equipment to contractors who are constructing projects for a Public Service District, Town or Utility Company (hereafter referred to as the Owner of the project) which may be regulated by the public employee's State Department?

OTHER FACTS RELIED UPON BY THE COMMISSION

The requestor is a Utility Supervisor with a State Department. His job responsibilities include: 1) reviewing permit applications and plans for Utility projects, 2) recommending approval of such application (final approval or denial is issued by the Department's District engineer at the Central Office level), 3) supervising all field inspectors while the work is being performed, 4) analyzing all work performed on the utility projects to insure it is in compliance with the Department's specifications, and 5) initiating the State Department's final review of the work performed on the completed Utility project.

The Owner of the project must submit an application to the State Department for the issuance of a permit allowing the company's use of State right of ways. The Owner is therefore obligated to the State Department to follow rules and regulations set forth in the permit.

The Contractor builds the project to meet the specifications of the Owner. In the event that the completed work does not comply with the State Department's rules and regulations, the Owner is held accountable by the employee's State Department. Field inspectors for the State Department supervise all work performed and the requestor has the ultimate authority over the Field Inspectors.

The public employee would like to lease construction equipment to contractors who are building projects for the Owner of the project. However, the requestor has indicated that there are other individuals or companies in the area which could lease such equipment to the contractors.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that...a 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...

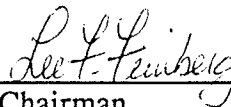
West Virginia Code Section 6B-2-5(h)(1) states in pertinent part that...no full-time public employee who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow himself or herself to be employed by any person who is or may be **regulated** by the governmental body which he or she serves while he or she 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.

ADVISORY OPINION

Pursuant to subsection 6B-2-5(h)(1) of the Ethics Act, a public employee who exercises policymaking, nonministerial or regulatory authority may not seek to be employed by any individual who may be regulated by his Department. The term "employed" includes providing services as an independent contractor (i.e. leasing equipment to a contractor). A portion of the public employee's job responsibilities would be classified as regulatory or nonministerial such as, reviewing and recommending permit applications from Utility Companies and supervising Field Inspectors on such projects. Therefore, it would be a violation of subsection 6B-2-5(h)(1) for the public employee to lease construction equipment to contractors who are constructing projects which are regulated by the public employee's State Department.

Subsection 6B-2-5(b)(1) of the Ethics Act prohibits a public employee from using his public office for private gain. In this instance, the requestor analyzes and reviews the work being performed and makes recommendations for the acceptance or denial of permits for utility projects. By allowing the supervisor to contract for private gain with persons whose work is specifically inspected by his department would give the appearance of the use of public office for private gain.

Therefore, it would be a violation of subsection 6B-2-5(b)(1) of the Ethics Act for a public employee to lease construction equipment to contractors who are constructing projects which are regulated by the public employee's State Department.


Chairman