

ADVISORY OPINION NO. 90-188

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

Director of a State Department

OPINION SOUGHT

Whether it is a violation of the Ethics Act for staff members of a State Department to be employed on a part-time basis by certain agencies regulated by the State Department?

OTHER FACTS RELIED UPON BY THE COMMISSION

It has been brought to the Director of a State agency's attention that some staff members are employed on a part-time basis by various outside child care agencies. These agencies are licensed and regulated by this Department.

In addition, most of the children in the care of these agencies are also in the Department's custody because of delinquency or abuse and neglect.

The employees in question are full-time social service staff members whose job assignments with the State Department include child protective services, foster care and adoption. Although these employees do not write the Department's rules and regulations they are considered to have nonministerial and regulatory authority since they are responsible for interpreting and applying the Department's policies. These policies include the placement of children in child care agencies licensed by the State Department.

Furthermore, the Department investigates reports of child abuse or neglect alleged to have occurred in the child care facilities. The fact that the staff members are employed on a part-time basis with these facilities could raise questions about the impartiality and independence of any such investigation.

The Department staff members are employed on a part-time basis as relief house parents and relief child care staff in these regulated agencies.

The Department's concern is that these staff members may be involved with placing children in a facility where they or their co-workers are employed on a part time basis.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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 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 official or public employee whether rendered as an employee or as an independent contractor.

West Virginia Code 6B-2-5(e) states in pertinent part that...no present or former public employee 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.

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Part-time Employment

Subsection 6B-2-5(h) provides that during the course of his or her employment a full-time public employee who exercises policymaking, regulatory or nonministerial authority may not be employed on a part-time basis with any person who is regulated by the public employee's governmental agency. "Person" is broadly defined in the Ethics Act to include businesses and agencies.

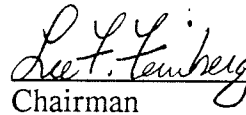
In this instance, the various child care agencies are regulated by the State Department, since the agencies are licensed through this Department. Also, allegations of child abuse or neglect in such facilities are investigated by the Department.

The employees referred to in this request appear to exercise some nonministerial or regulatory authority since, they are responsible for interpreting and applying the rules and regulations of the Department. Therefore, the employees in question fall within the category which prohibits them from seeking employment or being employed on a part-time basis with regulated persons.

Therefore, it would be a violation subsection 6B-2-5(h) of the Ethics Act for these staff members to be employed on a part-time basis by agencies regulated by their State Department.

Confidentiality

The Commission would also note that pursuant to subsection 6B-2-5(e) of the Ethics Act, a public employee may not knowingly disclose or use any confidential information acquired by him or her during the course of employment for his private gain or to further the interests of **another person** (including businesses or agencies).


Chairman