

ADVISORY OPINION NO.90-194

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 3, 1991

GOVERNMENTAL BODY SEEKING OPINION

A Commissioner of a State Department

OPINION SOUGHT

- a. Whether it is a violation of the Ethics Act for a State Department to contract with an Association to assist private individuals at hospitals when applying for Medicaid and other related services?
- b. Whether it is a violation of the Ethics Act for the State Department to receive money from participating hospitals for the salaries, fringe benefits, and travel expenses for the State workers placed in the hospitals through the Association?

OTHER FACTS RELIED UPON BY THE COMMISSION

A State Department received an inquiry from an Association regarding a new concept in which State employees would be placed on site in association member hospitals in order to generate Medicaid dollars for services rendered to eligible individuals who have previously not applied for Medicaid services.

The Association represents sixty-five hospitals throughout the State. All of the Association member hospitals are Medicaid providers. They are requesting that the Department outstation State employees in the hospitals for the purpose of taking applications for Medicaid and other related services and programs offered by the State Department. The hospitals have agreed, through contract, to pay the salaries, fringe benefits, and travel expenses for the State workers placed in the hospitals. The Association will coordinate the reimbursement to the State Department and will act as the contractor for this project. The workers will be recruited, employed and supervised by the State Department under this contract.

If the Department enters into the contract with the Association, the State Department will have the following responsibilities:

- 1) to employ qualified staff to work on behalf of the participating hospitals;

- 2) to ensure that the State Department employees complete all steps necessary to assist private individuals in the completion of application for a variety of medical and economical assistance programs provided by the State Department;
- 3) to provide wages, salary and benefits, to each employee of the State Department assigned to any participating hospital;
- 4) to bill the Association on a quarterly basis for services rendered by the State employees; and
- 5) to supervise the conduct and job performance of all public employees of the Department who are assigned to participating hospitals.

Upon entering into the contractual agreement with the State Department, the Association will have the following responsibilities:

- 1) to collect from participating hospitals amounts due and owing to the State Department; and
- 2) resolve any disputes occurring between the State Department and the participating hospitals concerning the performance of the agreement.

The Association will contract with each participating hospital in order to effectuate the purposes of this agreement. However, the Association will not be held liable as the financial guarantor on behalf of any participating hospitals.

An Advisory Committee, consisting of one representative from each participating hospital, two representatives from the State Department and two representatives from the Association will monitor the effectiveness of the program and provide a forum for resolving any problems relating to the operation of the program which may occur.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that...a public official or 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 or that of another person.

West Virginia Code Section 6B-2-5(h)(1) states in pertinent part that...no full-time public official or 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.

ADVISORY OPINION

a & b. The Ethics Commission, in considering this request has analyzed the facts herein and the pertinent statutory violations contained in the Ethics Act. The Commission has determined that there is nothing contained within the Ethics Act which would prohibit the plan as outlined in the request.

Therefore, it is the Commission's opinion, based on the facts presented that the program being established by the State Department would not be a violation of the West Virginia Ethics Act.


Vice-Chairman