

ADVISORY OPINION NO. #91-57
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON OCTOBER 3, 1991

GOVERNMENTAL BODY SEEKING OPINION

A former Public Official

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a former public official to appear in a representative capacity before his former governmental agency regarding new regulation filings or amendments to existing regulations which have been proposed by the Agency?

FACTS RELIED UPON BY THE COMMISSION

The requestor served as the Deputy Director of a State Division. During the period of his employment the Division amended the regulations related to the permitting and design of solid waste landfills and other solid waste management facilities. These regulations became effective on May 1, 1990 following approval by the Legislature during the 1990 regular session. This regulation filing amended the vast majority of the original regulations promulgated by the Division in the early 1980's.

The requestor personally participated in both policy decisions and drafting of the 1990 amendments to the regulations. He would now like to appear in a representative capacity before this State Division regarding a new regulation filing expected to be proposed by the Agency to amend the existing regulations promulgated by the Division in 1990. The requestor is unaware of the precise nature or scope of the anticipated new filing.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(f) states in pertinent part that...No present or former...appointed public official...shall during or after his...public...service, represent a client or act in a representative capacity...in a regulation filing or other **specific matter** which arose during his...period of public service and in which he...personally participated in a decision-making, advisory or staff support capacity.

ADVISORY OPINION

Pursuant to subsection 6B-2-5(f) of the Ethics Act, a former public official may not act in a representative capacity on behalf of any person in a specific matter such as a regulation filing which arose during his period of public service and in which he personally participated in a decision-making, advisory or staff support capacity.

The requestor has stated that as a public official, he did personally participate in the creation and filing of the Division's regulations promulgated in 1990. However, the former public official did not participate in any amendments to such regulations or any subsequent regulations filed by the State Division since his departure from the governmental agency.

Therefore, it would not be a violation of subsection 6B-2-5(f) of the Ethics Act for the former public official to appear in a representative capacity before his former governmental agency regarding **new or amended regulation filings** since such filings arose after his period of public service and he did not participate in a decision-making, advisory or staff support capacity during the creation of such amendments or new regulations.


Chairman