

ADVISORY OPINION NO. 91-91
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON JANUARY 9, 1992

GOVERNMENTAL BODY SEEKING OPINION

A Public Employee

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a public employee to incorporate a collection agency which would deal exclusively with delinquent government taxes?

FACTS RELIED UPON BY THE COMMISSION

Several public employees would like to establish a corporation which would serve as a collection agency dealing exclusively with recovering delinquent government taxes, such as municipal B & O taxes.

Included in this business proposal are a County Tax Deputy, whose current job responsibilities include the collection of delinquent Personal Property taxes and supervision of Bankruptcies; a County Tax Deputy, who is currently serving as clerk; a County Tax Deputy whose current position is Director of Data Processing; and a County Tax Deputy who serves as a Data Processing Assistant. The collection of municipal B & O and other such taxes are not considered part of their official job responsibilities since the County collects only Personal Property and Real Estate taxes.

The proposed Corporation will collect delinquent government taxes by contacting the violators by letter and telephone. After the Corporation conducts the research and initial "leg work" any delinquent taxes which they are unable to collect will then be turned over to the appropriate governmental agency for further legal action. All such work will be done on personal time at an established, separate location with its own private phone line, computer equipment and business hours. The Corporation's first endeavor will be to collect delinquent City B & O Taxes. Currently, the City utilizes a City Collector and Auditors to collect such taxes, but lacks sufficient funds to adequately complete the task.

The requestor states that none of the potential business partners who are public employees have access to confidential information regarding delinquent government taxes other than those collected by the County.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(h)(1) states 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.

ADVISORY OPINION

Pursuant to West Virginia Code §6B(h)(1) a public employee who exercises policymaking, nonministerial or regulatory authority may not seek employment with any **person** who is or may be regulated by his governmental agency.

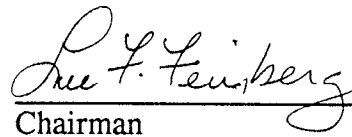
The requestor does have the authority contemplated by this section as it relates to the job responsibilities of a County Tax Deputy. Consequently, he may not seek employment with any person who is or may be regulated by his governmental agency. However, the requestor's employing agency does not regulate the assessment or collection of governmental taxes such as City B & O taxes.

Also, WV Code §6B-1-3(f) defines "Person" as an individual, corporation, business entity, labor union, association, firm, partnership or other governmental agencies. The Commission previously determined in Advisory Opinion #91-54 that since the definition does not include governmental agencies, the prohibition against seeking employment with regulated persons established in WV Code §6B-2-5(h)(1) would not apply to seeking employment with governmental agencies.

Therefore, it would not be a violation of WV Code §6B-2-5(h)(1) for the public employee to incorporate a collection agency dealing exclusively with delinquent government taxes since the private company would not be contracting with "persons" who are or may be regulated by his governmental agency.

The Commission would remind the requestor that pursuant to WV Code §6B-2-5(b)(1), a public employee may not use his office or the resulting prestige for his own private gain. For example, the public employee may not use his uniform or official status as a County Tax Deputy to obtain, influence, increase or promote business for his private collections company.

Further, it would be a misuse of public office for personal private gain for the requestor, through the corporation, to contract with the County in which he is employed to collect delinquent personal property taxes and any other debts when the collection of such taxes would fall within his official job responsibilities. In Advisory Opinion #91-02 and Advisory Opinion #91-82 the Commission has held that accepting private payment for providing information or services that are expected to be provided in the course of fulfilling official public job responsibilities was a violation of WV Code §6B-2-5(b)(1).


Chairman