

ADVISORY OPINION NO. #92-07

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON APRIL 2, 1992

GOVERNMENTAL BODY SEEKING OPINION

A County Prosecuting Attorney on behalf of a County Solid Waste Authority member

OPINION SOUGHT

Is it a violation of the Ethics Act for a member of a County Solid Waste Authority to seek election to the West Virginia House of Delegates?

FACTS RELIED UPON BY THE COMMISSION

Members of the County Solid Waste Authority are considered part-time appointed public officials. The members do not receive payment for service on the Authority's board but are reimbursed for expenses. A member of the Authority would like to seek election to the West Virginia House of Delegates.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(h)(1) states that no full-time public official...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

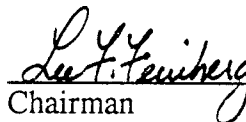
In considering this request the Ethics Commission has analyzed the facts presented in light of the statutory violations contained in the Ethics Act. The Commission has determined that there is no provision of the Ethics Act which would prohibit a County Solid Waste Authority member from seeking election to the West Virginia House of Delegates.

Although running for a seat in the Legislature may be considered "seeking employment", the prohibitions established in W.V. Code §6B-2-5(h) do not apply. That subsection prohibits only **full-time** public officials from seeking employment with regulated persons and the County Solid Waste Authority members are **part-time** public officials.

Further, this provision prohibits a public official from seeking employment with "persons" who are "regulated" by the official's public employer. Subsection 6B-1-3(f) of the Ethics Act defines "person" as an individual, corporation, business entity, labor union, association, firm, partnership or other such organization. The Commission determined in Advisory Opinion #91-52 that since the definition does not include governmental agencies the prohibition against seeking employment with regulated persons does not apply to other governmental agencies. Finally, WV Code §6B-2-5(h) does not apply to this case since the County Solid Waste Authority does not regulate the Legislature.

Therefore, it would not be a violation of WV Code §6B-2-5(h)(1), or the other provisions of the Ethics Act, for a County Solid Waste Authority member to seek election to the WV House of Delegates.

This opinion only addresses the application of the Ethics Act to the facts presented. The requestor may also wish to consult general election laws and laws pertaining to the powers, duties and qualifications of Board members of County Solid Waste Authorities.


Chairman