

ADVISORY OPINION NO. 92-39

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON OCTOBER 1, 1992

GOVERNMENTAL BODY SEEKING OPINION

A Public Employee

OPINION SOUGHT

Is it a violation of the Ethics Act for a public employee with a County Board of Education to seek employment with a Company which may conduct business with individual schools, teachers or parents?

FACTS RELIED UPON BY THE COMMISSION

The requestor is employed as the certification analyst/coordinator of services with a County school system. In that position the requestor has no authority or control over the letting of public contracts by the County Board of Education. The requestor has also served as an executive member of the PTA until her recent resignation and holds a lifetime membership in the State PTA.

The requestor is interested in seeking part-time employment as an educational consultant for a toy company. As a consultant for this company, the requestor would sell toys and other educational products. The customers would consist primarily of parents and teachers who are interested in enhancing creativity, developing fine and gross motor skills, promoting social-emotional growth, thinking, language and learning skills. The requestor may also sell the educational toys to individual schools or parent groups within the schools.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(b)(1) states in pertinent part that...a public employee may not knowingly and intentionally use his...office or the prestige of his...office for his...own private gain or that of another person...

West Virginia Code §6B-2-5(d)(1) states in pertinent part that...no public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which such official or employee may have direct authority to enter into, or over which he or she may have control...

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.

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Interest in Public Contracts

Pursuant to WV Code §6B-2-5(d)(1), a public employee may not have more than a limited interest in the profits or benefits of a public contract over which he has direct authority or control. However, as a certification analyst/coordinator of services with the County school system the requestor does not have authority or control over the County Board of Education's decision to purchase materials sold by his part-time employer. Further, as a part-time employee of the toy company, the requestor would have a limited interest in any potential public contract which may exist between the County Board of Education and his part-time employer.

Employment

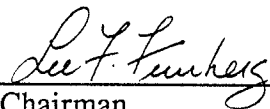
Pursuant to WV Code §6B-2-5(h)(1), a full-time public employee who exercises policymaking, nonministerial or regulatory authority may not seek employment with any person who is or may be regulated by his governmental agency. As a certification analyst/coordinator of services with the County Board of Education, the requestor may have the requisite authority contemplated by this section of the Ethics Act.

However, the Commission determined in Advisory Opinions #91-83 and #92-19 that the mere fact that a governmental entity may conduct business with or be responsible for directing or overseeing the actual work product of a "person" does not necessarily signify that such "person" is regulated by that public agency.

Therefore, it would not be a violation of WV Code §6B-2-5(h)(1) for the requestor to seek part-time employment with a toy company which, although it may conduct business with the requestor's governmental agency, is not regulated by such governmental agency.

Private Gain

Pursuant to WV Code §6B-2-5(b)(1), public employees may not use their office or its resulting prestige for their own private gain or for the private gain of another. Therefore, the requestor may not use her public employment position to influence, obtain, increase or promote business for the toy Company with which she is employed on a part-time basis. The requestor may not use public time, equipment and resources for private sales activities.


Chairman