

**ADVISORY OPINION NO. 95-02**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON MARCH 2, 1995**

**GOVERNMENTAL BODY SEEKING OPINION**

A Public Employee

**OPINION SOUGHT**

Is it a violation of the Ethics Act for a public employee to contract to provide services to a State institution when he is employed by that institution?

**FACTS RELIED UPON BY THE COMMISSION**

A State Correctional Institution is requesting proposals to provide psychological consultation and psychiatric services to assist with the classification and rehabilitation processing of all individuals committed to the custody of the facility.

The requester is a licensed psychologist and a public employee. As a public employee he serves as a full-time unit supervisor for this state correctional institution. His job responsibilities include overseeing the staff and ensuring that the procedures and instructions of the consulting psychologist given in regard to the institution's inmates are administered properly.

The requester would like to moonlight by bidding on the contract for the services of a consulting psychologist. As the consulting psychologist, the requester would provide psychological services such as testing and evaluations to the inmates of this State correctional institution. He would provide these services during his off-duty hours.

**PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

West Virginia Code §6B-2-5(d)(1) states in pertinent part that...no public official or public employee...or business with which he...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...may have control...

### ADVISORY OPINION

In this instance, the requester would like to contract as a consulting psychologist to provide psychological services such as testing and evaluations, to a State Institution. He would provide these services during his off-duty hours or reschedule his regular work hours. However, the requester is also a full-time unit supervisor for this institution and his job responsibilities include overseeing the staff and ensuring that the procedures and instructions of the consulting psychologist are administered properly.

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 may have direct authority or control. Although any contract for psychological services will be awarded and approved by the State Division in conjunction with the Acting Warden and Business Manager of the Institution, the Ethics Commission has previously held that an individual has **control** over a contract as contemplated by WV Code §6B-2-5(d)(1) if he oversees the administration of the contract or if he monitors or supervises the services provided under the contract.

Therefore, it would be a violation of WV Code §6B-2-5(d)(1) for the requester to contract to provide services to the State institution since he is employed by this institution as a supervisor and as such has authority or control over a contract in which he has more than a limited interest.

  
Chairman