

ADVISORY OPINION NO. 96-21

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 6, 1996

GOVERNMENTAL BODY SEEKING OPINION

A State Employee

OPINION SOUGHT

Is it a violation of the Ethics Act for a State employee to seek part-time employment outside State government or with another State agency?

FACTS RELIED UPON BY THE COMMISSION

The requester is employed as a paralegal for a State Agency. In this position he does not exercise any policy making authority, nor does he take regulatory action or supervise other employees. In the past he has served legal papers and provided paralegal services to attorneys on a contract basis. He would like to re-establish this activity, with an emphasis on process serving, during his off duty hours. The requester has stated that any service which could not be completed after work hours or during the weekends, would be subcontracted to another available individual.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b)(1) provides 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(h)(1) provides in pertinent part that... No full-time...public employee may seek employment with, be employed by, or seek to sell or lease real or personal property to any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or

(B) Has a matter before the agency to which he or she is working or a subordinate is known by him or her to be working.

West Virginia Code 6B-2-5(h)(2) provides in pertinent part that...Within the meaning of this section, the term "employment" includes professional services and other services rendered by the...public employee, whether rendered as employee or as an independent contractor;...and "subordinate" includes only those agency personnel over whom the public servant has supervisory responsibility.

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West Virginia Code 6B-2-5(h)(1)(A) provides that no public servant may seek employment with, be employed by, or seek to sell or lease real or personal property to any "person" who had a matter before a public agency on which the public servant or a subordinate took regulatory action during the last twelve months. West Virginia Code 6B-2-5(h)(1)(B) precludes seeking employment with any "person" who currently has a matter before the agency on which the public servant or a subordinate is working. Within the meaning of this section, the term "employment" includes professional services and other services which are rendered as an employee or independent contractor.

The term "person" is defined as an individual, corporation, business entity, labor union, association, firm, partnership, limited partnership, committee, club or other organization or group of persons, irrespective of the denomination given such organization or group. Since governmental agencies have been omitted from this definition, the Commission has determined that the prohibition against seeking employment with specific individuals as established in subsection 6B-2-5(h)(1) of the Ethics Act would not apply to seeking employment with other governmental agencies. See Advisory Opinions #91-54, #91-69, #92-49 and #94-23. Consequently, the Commission has determined that there is no provision of the Ethics Act which would prohibit the requester from seeking part-time employment with another State agency.

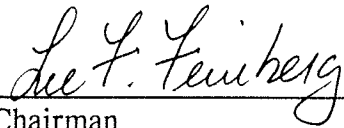
However, the requester must be mindful of WV Code 6B-2-5(h)(1) when seeking employment with private individuals, attorneys or law firms. He may not seek part-time employment with an attorney or any other such individual who had a matter before his governmental agency on which he took regulatory action in the past twelve months or any person who currently has a matter before his governmental agency on which he or a subordinate employee is working. For the purpose of this section, a "subordinate" employee includes only those agency personnel over whom the requester has supervisory responsibility. As noted in the facts of this Opinion, the requester does not exercise supervisory responsibilities and need not concern himself with the actions of "subordinate" employees.

The Commission cautions that the requester may not circumvent the guidelines established at WV Code 6B-2-5(h)(1) by subcontracting prohibited assignments to another individual.

Further, pursuant to West Virginia Code 6B-2-5(b)(1), a public servant may not use his office or the prestige of his office for his own private gain. Consequently, the requester may not use his public employment position to influence, obtain, increase or promote his business as a private, independent paralegal or process server.

Finally, the Commission's legislative rules on private gain expressly prohibit the use of public time, equipment and resources in the course of performing private activities. (See 258 CSR 6-5.2 and 6-8) Clearly, the office space, phones, stationary and other items provided to the requester for use in the performance of his public duties may not be used to subsidize a private effort, i.e. providing private process server activities or other paralegal services.

This opinion is limited to the precise set of facts and circumstances presented and should not be relied upon by any other public official or employee without further consultation with the Commission staff.


Chairman