

ADVISORY OPINION NO. 97-04
Issued on February 6, 1997 by the
WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

State Trooper

OPINION SOUGHT

Is it a violation of the Ethics Act for a State Trooper to purchase and operate a wrecker and towing company that will operate in the geographic area in which he is assigned?

If not, may co-workers call that Trooper's company when they encounter citizens who require wrecker or towing services?

FACTS RELIED UPON BY THE COMMISSION

A State Trooper plans to purchase a wrecker and towing service that will operate within the geographic area in which he is assigned. He is concerned to establish whether he would violate the Ethics Act if he calls that service when citizens he encounters require a wrecker.

He also is concerned to establish whether co-workers would violate the Ethics Act if they call his company when they encounter citizens requiring wrecker or towing services.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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

West Virginia Code 6B-2-5(h) provides

(1) No full-time official or 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.

(2) Within the meaning of this section, the term "employment" includes professional services and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor; "seek employment" includes responding to unsolicited offers of employment as well as any direct or indirect contact with a potential employer relating to the availability or conditions of employment in furtherance of obtaining employment; and "subordinate" includes only those agency personnel over whom the public servant has supervisory responsibility.

...

(4) A full-time public official or full-time public employee may not take personal regulatory action on a matter affecting a person by whom he or she is employed or with whom he or she is seeking employment or has an agreement concerning future employment.

...

ADVISORY OPINION

1.) The Ethics Act contains no provision which would prohibit the Trooper from owning and operating a wrecker and towing company in the geographic area to which he is assigned. However, the Act does prohibit full-time public servants from seeking or accepting employment with a person or business subject to their regulatory authority. This prohibition would apply to both the Trooper and the business he owned and operated.

WV Code 6B-2-5(h) identifies such regulated persons and businesses as those which (A) had a matter on which the public servant took, or a subordinate is known to have taken, regulatory action within the preceding twelve months or (B) has a matter on which the public servant or a subordinate is currently working.

State Troopers provide a wide variety of services, many which are not regulatory in nature. For example, State Troopers do not exercise regulatory authority when they assist motorists stranded due to mechanical failure. However, a State Trooper does exercise regulatory authority when stopping a vehicle for a violation of law and it would be a violation of the Act for the Trooper's company to be hired to tow such a vehicle, if it had been stopped by the Trooper or a subordinate. A situation where a trooper is investigating an accident to determine possible fault would also constitute a regulatory action.

If the Trooper is to operate such a business, it is his responsibility to insure that the business does not perform work for persons or businesses subject to his regulatory authority or that of a subordinate. It would be a violation for his business to be employed by regulated persons and businesses.


2.) The Ethics Act prohibits public servants from using their public positions, or the influence of those positions, for their own private gain or that of another. WV Code 6B-2-5(b)(1).

In A.O. 95-13 the Commission established guidelines for school psychologists who also worked part-time in private practice and were approached by parents for referrals. In that opinion the Commission ruled that it would be a violation for a school psychologists to recommend themselves, or a practice with which they were associated, for part-time work.

It would be a violation of that prohibition for the Trooper's fellow officers, acting in their official capacity, to specifically recommend the Trooper's towing company to members of the public who require such services. Similarly, it would be a violation for the Trooper to call, or cause others to call, his towing company to handle towing work he encounters in his official capacity.

It would also be a violation for the Trooper, or his fellow officers and coworkers, while acting in an official capacity, to recommend the use of his company, to provide a less than comprehensive listing of all available companies, or to give advantage to his company when providing a comprehensive listing by indicating or highlighting that it is owned by a State Trooper.

It would also be a violation of WV Code 6B-2-5(b)(1) if the trooper chose a name for the company which indicated it was owned by a State Trooper.


Chairman