

ADVISORY OPINION NO. 93-43
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON DECEMBER 2, 1993

GOVERNMENTAL OFFICIAL SEEKING OPINION

Registered lobbyist and appointee to a State Commission

OPINION SOUGHT

Does the Ethics Act prevent a registered lobbyist from serving as a gubernatorial appointee to a State Commission?

FACTS RELIED UPON BY THE COMMISSION

The requestor is a registered lobbyist who has recently been appointed to serve on a State Commission. He is retired and draws a pension from a business that is regulated by the State Commission. Among the lobbyist's clients is a trade association comprised of businesses that are also regulated by this State Commission. The requestor would like to continue to lobby for the trade association but would not lobby regarding issues involving the State Commission.

The membership of the State Commission is set by the statute which created the Commission. The seven member Commission is comprised of two state officials who serve *ex officio*, three members who serve as representatives of the public at large, and two members who serve as representatives of industries engaged in business in West Virginia. The requestor was appointed as one of the two members who represent industries doing business in this state.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-1-2(c) states in pertinent part that...the state government and its many public bodies and local governments have many part-time public officials...serving in...appointed capacities; and that certain conflicts of interest are inherent in part-time service and do not, in every instance, disqualify a public official...from the responsibility of voting or deciding a matter; however, when such conflict becomes personal to a particular public official...such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

ADVISORY OPINION

In considering this request, the Ethics Commission has analyzed the facts presented in light of the statutory provisions contained in the Ethics Act. The Commission has determined that there is no provision of the Ethics Act which per se prohibits the requestor from serving as an industry representative to a State Commission while also being a lobbyist for a trade association whose members are regulated by that State Commission.

The Ethics Act provides, at WV Code §6B-1-2(c), that conflicts of interest are inherent in part-time public service, but that such conflicts are not always sufficient to disqualify a public servant from taking official action. The Act provides that where a conflict becomes "personal" to a particular public servant, he or she should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

The Commission's Legislative Rule on Voting, CSR §158-9-2.2 provides that a conflict is not "personal" to the public servant, provided his interests are affected only as a member of, and to no greater extent than any other member of, a profession, occupation, or class. Since such conflicts are not considered "personal" they would not disqualify the requestor from taking official action as a member of that State Commission.

Therefore it would not be a violation of the Ethics Act for the requestor to serve on the State Commission to which he has been appointed. This is true even if, as a member of the State Commission, he votes on matters effecting the individual participants in the Trade Association which employs him since the statute providing for his appointment to the State Commission calls upon him to represent the interests of that same class.

Vice Chairman