

ADVISORY OPINION NO. 91-03
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION

ON FEBRUARY 7, 1991

GOVERNMENTAL BODY SEEKING OPINION

Executive Director of an Educational Broadcasting Authority

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a public employee to contract with an independent non-profit Corporation which is associated with the Broadcasting Authority?

FACTS RELIED UPON BY THE COMMISSION

The Broadcasting Authority produces weekly broadcasts of a nationally broadcast radio show. The production of the show is accomplished with considerable assistance from an independent non-profit Corporation. The Corporation does not receive compensation for the production assistance. Further, the Corporation assists the Broadcasting Authority in fundraising campaigns.

The Broadcasting Authority employs a full-time engineer to be responsible for the design and maintenance of control and production rooms as well as the technical "sound" of the statewide network, and maintenance of facilities and equipment.

This engineer has developed a contractual relationship with the non profit Corporation which requires him to serve as engineer for the weekly broadcasts of the nationally broadcast radio show. These services are performed on weekends. The contract provides that the engineer's work is separate and distinct from services rendered as a public employee for the Broadcast Authority.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(h)(1) states 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.

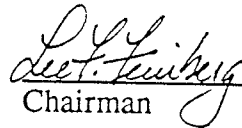
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Pursuant to subsection 6B-2-5(h)(1) of the Ethics Act, a full-time public employee who exercises policymaking, nonministerial or regulatory authority may not be employed with any person who is or may be regulated by his governmental agency.

The engineer is responsible for the design and maintenance of control and production rooms as well as the technical "sound" of the statewide network, and maintenance of facilities and equipment. He does not exercise any policymaking, nonministerial or regulatory authority.

Further, the Broadcasting Authority does not regulate or control the non-profit Corporation. The relationship which exists between the Broadcasting Authority and the Corporation is strictly based on general support and assistance during fund raising campaigns.

Therefore, it would not be a violation of subsection 6B-2-5(h)(1) of the Ethics Act for the engineer, as a public employee, to contract with an independent non-profit Corporation which is associated with the Broadcasting Authority.


Chairman