ADVISORY OPINION NO. 99-09

Issued On March 4, 1999 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **State Board** asks whether its personnel should be registered as lobbyists if they consult with members of the Legislature on matters of legislative concern to the Board and its mission.

FACTS RELIED UPON BY THE COMMISSION

The State Board explains that it believes a recent decision of the WV Supreme Court requires State boards to be "informed" and "pro-active" in discharging their fiduciary duties, to evaluate and monitor legislative actions and where problems exist or may come to exist, "immediately and forcefully inform the Legislature of the problems."

The officers and staff of the Board ask whether they are required to register as lobbyists with the Ethics Commission, if they are to be involved in communicating to members of the Legislature the Board's legislative concerns.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-3-1(7)(B) provides in pertinent part that...The term "lobbyist" shall not include the following persons, who shall be exempt from the registration and reporting requirements set forth in this article, unless such persons engage in activities which would otherwise subject them to the registration and reporting requirements:

(vi) The governor, members of the governor's staff, members of the board of public works, officers and employees of the executive branch who communicate with a member of the Legislature on the request of that member, or who communicate with the Legislature, through the proper official channels, requests for legislative action or appropriations which are deemed necessary for the efficient conduct of the public business or which are made in the proper performance of their official duties, are exempt.

ADVISORY OPINION

The Ethics Act requires that certain persons who communicate with members of the State Legislature, in an effort to influence legislation, are required to be registered as lobbyists with the Ethics Commission. The Act also exempts various classes or categories from the registration requirement.

WV Code 6B-3-1(7)(B)(vi) provides that "... officers and employees of the executive branch who communicate with the Legislature, through the proper official channels, requests for legislative action or appropriations which are deemed necessary for the efficient conduct of the public business or which are made in the proper performance of their official duties, are exempt."

The Commission finds that the State Board's communications with members of the Legislature about matters of concern to the Board's mission are exempt and its officers and staff are not required to be registered as lobbyists with the Ethics Commission.

Nancy Hunter

Chairman