

COPY

**ADVISORY OPINION NO. 2000-38**

**Issued On January 4, 2001 By The**

**WEST VIRGINIA ETHICS COMMISSION**

**OPINION SOUGHT**

A **State Employee** asks if he is subject to an Ethics Act provision which would apply to him only if he is considered to be an "appointed public official", as that term is used in the Ethics Act.

**FACTS RELIED UPON BY THE COMMISSION**

The Ethics Act prohibits elected and appointed public officials from appearing in a representative capacity before their agency in regard to certain matters. The prohibition applies during their public service and for a period of six months after terminating their public service. The Employee asks whether he is subject to this prohibition. The answer turns on whether he is an appointed public official.

The Employee serves as the Governor's Chief of Staff. He serves at the will and pleasure of the Governor. His principal responsibilities include the day to day operation of the Governor's Office, handling the flow of information between the Governor and his Cabinet members and in coordinating the activities of Cabinet Secretaries in budget preparation and problem resolution.

**CODE PROVISIONS RELIED UPON BY COMMISSION**

WV Code 6B-1-2 provides in part that ... As used in this chapter, unless the context in which used clearly requires otherwise:

...

(b) "Employee" means any person in the service of another under any contract of hire, whether express or implied, oral or written, where the employer or an agent of the employer or a public official has the right or power to control and direct such person in the material details of how work is to be performed and who is not responsible for the making of policy nor for recommending official action.

...

(i) "Public Official" means any person who is elected or appointed and who is responsible for the making of policy or takes official action which is either ministerial or nonministerial, or both, with respect to (i) contracting for, or procurement of, goods or services, (ii) administering or monitoring grants or subsidies, (iii) planning or zoning, (iv) inspecting, licensing, regulating or auditing any person, or (v) any other activity where the official action has an economic impact of greater than a de minimis nature on the interest or interests of any person.

**ADVISORY OPINION**

The Commission rules that the Governor's Chief of Staff is an employee and not an appointed public official. Therefore the Employee is not subject to the Act's limitation on practice contained in WV Code 6B-2-5(g).

*John A. Gurd*

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Chairman