

**ADVISORY OPINION NO. 2006-18**

**Issued on January 4, 2007 By the**

**WEST VIRGINIA ETHICS COMMISSION**

**OPINION SOUGHT**

Whether a Member of a State Commission which regulates professional and amateur athletes may serve as a judge or referee at a sports event over which the Commission has oversight?

**FACTS RELIED UPON BY THE COMMISSION**

The Requester is a Member of a State Commission which has direction, management and control over all amateur, professional and semi-professional events in the sport which it regulates. The Members of the State Commission serve, without pay, at the will and pleasure of the Governor. The Commissioners are reimbursed for their travel, lodging and meal expenses in accordance with the state travel regulations. The State Commission has a limited budget.

The promoters of the sporting events in question are responsible for hiring both judges and referees. These event officials must first be certified by the State Commission. For an event, the Commission designates which officials shall preside at the event. The Commission's legislative rule provides that a Commission Member may act as a judge in the event of an emergency. There is no similar provision addressing whether members of the Commission may act as a referee in the event of an emergency.

The enabling legislation specifically permits the members of the Commission to be present at the sporting events without charge for the purpose of seeing that the rules of the sport are strictly observed. If no member of the Commission is available to attend an event, then the Commission may appoint an inspector to act as a Commission representative.

The promoter is responsible for paying the judges and referees. The compensation rate is established by statute and the Commission's Legislative Rule. The current rates are judge, \$50.00 per day, and referee, \$75.00 per day. Normally, the referee or judge is not reimbursed for mileage and other related travel expenses.

At present, the Requester states that the Commission has difficulty finding qualified officials to serve at this rate of pay; particularly as mileage expenses are not included. As such, at times the Requester will act as a judge or referee. Normally, the requester serves as an official without compensation. Once or twice he has accepted the statutory compensation rate from the promoter for his services.

Some of the events are televised by the major television networks. The Requester serves as a referee or judge at high profile events to ensure that the sporting event is conducted fairly and in a professional manner and to ensure the health and safety of the participants by strictly enforcing the rules of the sport. The Requester also serves as an official when the Commission is unable to find a qualified person to serve.

## CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(b) reads in relevant part... *Use of public office for private gain.* -- (1) 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. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

W. Va. Code § 6B-2-5(h)(5) reads... A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her job responsibilities.

W. Va. Code, § 6B-2-5(d) reads in relevant part... *Interests in public contracts.* -- (1) In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control: *Provided*, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: *Provided, however*, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body, or prohibit a part-time appointed public official from entering into a contract which the part-time appointed public official may have direct authority to enter into or over which he or she may have control when the official has not participated in the review or evaluation thereof, has been recused from deciding or evaluating and has been excused from voting on the contract and has fully disclosed the extent of his or her interest in the contract.

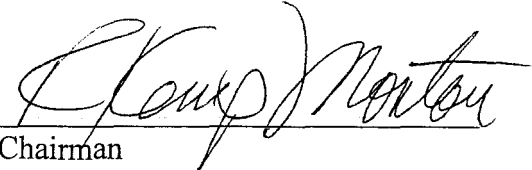
## ADVISORY OPINION

At times the Requester serves as a judge or referee. The Legislative Rule which governs the sporting events in question states that a Commission Member may act as a judge in an event of an emergency. The rule does not define emergency. The Rule does not address whether a Commission Member may act as a referee.

The Ethics Commission does not have authority to interpret the intent of the Legislature under these circumstances. Specifically, the Ethics Commission does not have the authority to determine whether the exclusion of language in the rule authorizing a Commission Member to serve as a referee is based upon a policy concern that such dual service may create a potential for conflict. For these reasons, the Commission finds that it is without authority to rule on: (1) whether the requester may act as a judge; or (2) whether the requester may serve as a referee, with or without compensation.

The Ethics Commission recommends that the Requester's Commission seek clarification on this issue through the Legislative process. The Requester's Commission may seek to have its enabling legislation amended and may also proceed to propose an amendment to its Legislative Rule. Further, the Requester's Commission may also seek immediate relief through the filing of an emergency rule. If the Legislature amends the enabling statute and related Legislative rule, then there is nothing in the Ethics Act which prevents a part-time board member from volunteering his or her services as a referee. The Commission Member may only seek compensation for this service, either from the promoter or his Commission, if the Legislature specifically authorizes such compensation through statute or approval of a Legislative Rule.

This opinion is limited to the facts and circumstances of this particular case, and may not be relied upon as a precedent by other persons.

  
Chairman