

Advisory Opinion 2024-07

Issued on September 5, 2024, by

The West Virginia Ethics Commission

Opinion Sought

A **Legislative employee** seeks guidance on the post-employment restrictions in the Ethics Act.

Facts Relied Upon by the Commission

The Requester is a legislative employee whose primary responsibility is to provide expert advice and assistance to a legislative committee in his area of expertise. The Requester is not an attorney. He reports to a legislative manager, not to a member of the Legislature. He does not take an oath of office, and his position was not created in the West Virginia Code.

The Requester seeks guidance on the restrictions in the Ethics Act that will apply to him if he leaves his legislative position and is employed in industries and fields in his area of expertise.

Code Provisions Relied Upon by the Commission

W. Va. Code § 6B-2-5(f) states, in relevant part:

(f) *Prohibited representation.* -- No present or former elected or appointed public official or public employee shall, during or after his or her public employment or service, represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other particular matter involving a specific party or parties which arose during his or her period of public service or employment and in which he or she personally and substantially participated in a decision-making, advisory or staff support capacity, unless the appropriate government agency, after consultation, consents to such representation.

. . . .

The provisions of this subsection shall not apply to legislators who were in office and legislative staff who were employed at the time it originally became effective on July 1, 1989, and those who have since become legislators or legislative staff and those who shall serve hereafter as legislators or legislative staff.

W. Va. Code § 6B-2-5(g)(1) provides, in relevant part:

No elected or appointed public official and no full-time staff attorney or accountant shall, during his or her public service or public employment or for a period of one year after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate or propose rules, appear in a representative capacity before the governmental entity in which he or she serves or served or is or was employed in the following matters:

- (A) A contested case involving an administrative sanction, action or refusal to act;
- (B) To support or oppose a proposed rule;
- (C) To support or contest the issuance or denial of a license or permit;
- (D) A rate-making proceeding; and
- (E) To influence the expenditure of public funds.

....

(3) A present or former public official or employee may appear at any time in a representative capacity before the Legislature, a county commission, city or town council, or county school board in relation to the consideration of a statute, budget, ordinance, rule, resolution, or enactment.

(4) Members and former members of the Legislature and professional employees and former professional employees of the Legislature shall be permitted to appear in a representative capacity on behalf of clients before any governmental agency of the state or of county or municipal governments, including county school boards.

W. Va. Code § 6B-3-2(e) states, in relevant part:

The following public officers or employees may not, during or up to one year after the termination of their public employment or service, be allowed to register as lobbyists:

- (1) Members of the Legislature;
- (2) Members of the Executive Department as referenced in article VII, section one of the Constitution of West Virginia;
- (3) Will and pleasure professional employees of the legislature under the direct supervision of a member of the legislature;
- (4) Will and pleasure professional employees of members of the Executive Department under the direct supervision of the Executive Department officer and who regularly, personally and substantially participates in a decision-making or advisory capacity regarding agency or department policy;
- (5) Members of the Supreme Court of Appeals;

- (6) Any department secretary of an executive branch department created by the provisions of section two, article one, chapter five-f of this code; and,
(7) Heads of any state departments or agencies.

Advisory Opinion

No provision in the Ethics Act specifically prohibits public officials or public employees from working for a particular business or other public or private entity after they leave government service. [Advisory Opinion 2012-09](#) and [Advisory Opinion 2022-12](#) (discussing this rule and the relevant restrictions). However, the Ethics Act restrictions may apply. *Id.* The relevant provisions of the Act will now be addressed.

Revolving door provision governing lobbying

The Ethics Act, W. Va. Code § 6B-3-2(e), prohibits certain public officials and public employees in state government from registering as lobbyists during their public service or employment and for one year after. This prohibition is commonly referred to as the “lobbyist revolving door” provision. This provision applies to various categories of public officials and public employees, including “will and pleasure professional employees of the legislature under the direct supervision of a member of the legislature.” W. Va. Code § 6B-3-2(e)(3).

The lobbyist revolving door provision does not apply to the Requester because he is not under the direct supervision of a member of the Legislature. Instead, his direct supervisor is a legislative manager. See [Advisory Opinion 2015-02](#) and [Advisory Opinion 2016-02](#) (holding that a legislative attorney and a legislative research analyst, respectively, may register as lobbyists after the termination of their employment with the Legislature because their direct supervisors were not members of the Legislature).

The Commission holds that a legislative employee, who is not under the direct supervision of a member of the Legislature, is not subject to the lobbyist revolving door prohibition in W. Va. Code § 6B-3-2(e). The Commission holds, therefore, that the Requester may register as a lobbyist after he leaves his employment with the Legislature and is not subject to the one-year waiting period.

Revolving door provisions governing appearances before a government agency

There is another revolving door provision in the Act, at W. Va. Code § 6B-2-5(g), which contains a one-year “cooling off” period during which certain public officials and public employees may not represent a client before his or her former governmental agency. This provision applies to elected and appointed public officials, full-time staff attorneys, and accountants, but it does not apply to legislators or legislative staff, such as the Requester. The Commission bases this conclusion on two specific exceptions in W. Va. Code § 6B-2-5(g) that state:

A present or former public official or employee may appear at any time in a representative capacity before the Legislature, a county commission, city or town council, or county school board in relation to the consideration of a statute, budget, ordinance, rule, resolution, or enactment.¹

Members and former members of the Legislature and professional employees and former professional employees of the Legislature shall be permitted to appear in a representative capacity on behalf of clients before any governmental agency of the state or of county or municipal governments, including county school boards.²

The Commission holds that a legislative employee is not subject to the one-year revolving door ban in W. Va. Code § 6B-2-5(g).

Representing Parties in Particular Matters

The Ethics Act, W. Va. Code § 6B-2-5(f), prohibits public officials and employees from post-employment involvement in a “particular matter involving a specific party or parties which arose during his or her period of public service or employment and in which he or she personally and substantially participated in a decision-making, advisory or staff support capacity, unless the appropriate government agency, after consultation, consents to such representation” or one of the other exceptions applies. *Id.* This provision does not, however, apply to legislators or legislative staff because of a specific exception that states: “The provisions of this subsection shall not apply to legislators who were in office and legislative staff who were employed at the time it originally became effective on July 1, 1989, and those who have since become legislators or legislative staff and those who shall serve hereafter as legislators or legislative staff.”³ *Id.*

The Commission holds that a legislative employee is not subject to the restrictions in W. Va. Code § 6B-2-5(f).

Conclusion

The Commission holds that the Requester may, after leaving his legislative employment, be employed in the private or public sector, register as a lobbyist without waiting one year, and appear before the Legislature in a representative capacity. He may not knowingly and improperly disclose any confidential information acquired in the course of his official duties, or use such information

¹ W. Va. Code § 6B-2-5(g)(3)

² W. Va. Code § 6B-2-5(g)(4)

³ The Act was passed in 1989, and the exception for legislators and legislative employees was added in 1992. PUBLIC OFFICIALS—PROHIBITED REPRESENTATION, 1992 West Virginia Laws Ch. 80 (H.B. No. 4361). This amendment to the Act modifies the holding in [Advisory Opinion 1991-94](#), to the extent that the holding relies upon the prior version of W. Va. Code § 6B-2-5(f).

to further his personal interests or the interests of another person, including the interests of a new employer. W. Va. Code § 6B-2-5(e).

This Advisory Opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester must contact the Ethics Commission for further advice as it may alter the analysis and render this Opinion invalid. This Advisory Opinion is limited to questions arising under the Ethics Act, W. Va. Code §§ 6B-1-1 through 6B-3-11, and does not purport to interpret other laws or rules.

In accordance with W. Va. Code § 6B-2-3, this Opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked or the law is changed.


Robert J. Wolfe, Chairperson
West Virginia Ethics Commission