ADVISORY OPINION NO. 2015-02

Issued On February 5, 2015, by

THE WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A non-partisan counsel to a chamber of the West Virginia Legislature asks for an interpretation of the prohibition against certain public employees and officers being allowed to register as lobbyists for a period subsequent to the termination of their public employment or service.

The Requester specifically asks whether he is a "will and pleasure employee of the Legislature under the direct supervision of a member of the Legislature" as used in W. Va. Code § 6B-3-2(e) and whether W. Va. Code § 6B-3-2(e)'s prohibition against registering as a lobbyist "during or up to one year after the termination of ... public employment or service" means that the prohibition may be less than one year.

FACTS RELIED UPON BY THE COMMISSION

The Requester is currently employed as a full-time non-partisan counsel to a chamber of the West Virginia Legislature, and desires to seek private sector employment. He states that he is not directly supervised by any member of the Legislature, and is instead directly supervised by the Chief Counsel of the committees to which he is appointed. He further states that the chamber also employs a Chief of Staff who supervises all chamber employees and operates as Chief Counsel to the Speaker.

CODE PROVISION RELIED UPON BY THE COMMISSION

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:
>
> (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 ...

ANALYSIS

The Ethics Act, at W. Va. Code § 6B-3-2(e), prohibits certain categories of officers and employees of state government from registering as a lobbyist for "during or up to one year" after the termination of their public employment or service. This is commonly referred to as a "revolving door" provision. One of those categories is "will and pleasure professional employees of the Legislature under the direct supervision of a member of the Legislature." The Requester asks whether this statute applies to him.

This is not an issue of first impression for the Ethics Commission. In Advisory Opinion 2012-25, the Commission determined that a Chief Inspector for a water and waste management agency was not subject to the prohibition against registering as a lobbyist because he did not directly report to a member of the Executive Department, but rather reported directly to an employee of the agency that employed him.

Similarly, the Requester does not report directly to a member of the Legislature, but to the Chief Counsel of the committees to which he is appointed, who in turn is supervised by the Chief of Staff. Therefore, the Requester, despite being a "will and pleasure professional employee of the Legislature," is not "under the direct supervision of a member of the Legislature." Accordingly, he is not subject to the revolving door prohibition set forth in W. Va. Code§ 6B-3-2(e).

Although the Requester is not subject to the prohibition in W. Va. Code§ 6B-3-2(e), the Commission states that the plain language of the phrase "during or up to one year" means one full year subsequent to an affected employee or officer's termination of public employment or service.

In conclusion, under the facts presented the Requester may register as a lobbyist after the termination of his employment with the Legislature. The prohibition against certain employees and officers registering to lobby in W. Va. Code§ 6B-3-2(e) is applicable for one full year subsequent to the termination of public employment or service.

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 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, et seq., 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.

/s/ R. Kemp Morton, Chairman
Kemp Morton, Chairman