

ADVISORY OPINION NO. 2001-35

Issued On February 7, 2002 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **State Forester** asks if he may work part-time as a paid forestry consultant to a landowner whose forest land is located in the geographic area over which he has jurisdiction.

FACTS RELIED UPON BY THE COMMISSION

The Forester is a registered professional forester employed full-time by the State Division of Forestry. He is also a licensed consulting forester. A private landowner has asked the Forester to advise him, for pay, about the management of a 1,000 acre tract of forest land.

Under existing State Forestry policies, State Foresters may provide landowners with free or heavily subsidized forest management services comparable to the work the Forester proposes to provide on his own time as a paid consultant. While there are limits on the size of the tract that may qualify for these services, it appears that the 1,000 acre tract may fall within the upper limits of those which qualify.

The Division of Forestry's regulatory responsibilities encompass the Logging Sediment Control Act and forest fire laws. The Division also regulates the digging, possession and sale of ginseng. It issues permits to and regulates the activities of ginseng dealers. Logging businesses, not landowners, are regulated by the Logging Sediment Control Act.

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code 6B-2-5(h) *Employment by regulated persons*, provides in part that
“(1) No ... full-time public employee may seek employment with, be employed by, or seek to sell or lease real or personal property to any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or

(B) Has a matter before the agency to which he or she is working or a subordinate is known by him or her to be working.

...

(5) 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 public job responsibilities.”

ADVISORY OPINION

The Ethics Act contains two provisions which bear on the Forester's interest in working part-time as a paid forestry consultant.

The first is the Ethics Act's prohibition against full-time public servants having a business relationship with a regulated person - someone they, or their subordinates, regulate. This prohibition means that the Forester may not work as a paid consultant for, or be employed part-time in any capacity by, anyone who is regulated by him or one of his subordinates.

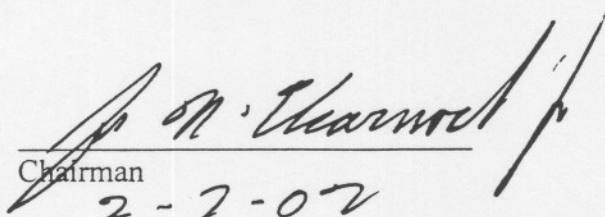
The Commission finds that Foresters regulate those in regard to whom they, or their subordinates, have taken official action on matters involving enforcement of the Logging Sediment Control Act, forest fire laws and the ginseng program. They do not regulate forest landowners generally, or those to whom they provide forestry management services.

It would not be a violation of this provision of the Ethics Act for the Forester to be employed part-time as a paid consultant by the landowner, assuming neither he nor any of his subordinates have taken regulatory action in regard to the landowner within the last year.

The second provision is the Act's prohibition against public servants accepting private compensation for providing information or services that they are required to provide in carrying out their public job responsibilities. This means the Forester can't charge someone for providing forestry program services that he, as a State Forester, is obliged to provide them for free.

If the landowner is entitled to receive free or subsidized forest management services from the State Forester, or his subordinates, it would be a violation for the Forester to accept private pay from the landowner for performing the same services on his own time. If the landowner is not entitled to receive free or subsidized management services from the State, it would not be a violation for the Forester to accept private pay for doing the work on his own time.

The Ethics Commission has neither the authority nor ability to decide the question of the landowner's eligibility. That is a matter to be decided by the State Forestry Division. The Forester is responsible to insure that his secondary employment plans comply with the rules and regulations of the State Forestry Division. Compliance with the requirements of the Ethics Act would not excuse him from more demanding requirements, if any, established by his own agency.


Chairman

2-7-02