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ADVISORY OPINION NO. 2001-20

Issued On June 7, 2001 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **State Legislator** asks if he may be employed as the Director of a federally funded State University Institute?

FACTS RELIED UPON BY THE COMMISSION

The University has advertised for applicants to fill the position of Director for an Institute created and funded by the US Congress. The University is responsible for setting up and overseeing the operation of the Institute and the Director will report to the University President. The Legislator serves as Vice Chairman of a Legislative Education Committee.

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code 6B-2-5(b)(1) provides in pertinent part that ... 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

ADVISORY OPINION

In Advisory Opinion 96-55 the Commission reviewed the limitations the Ethics Act places on employment by part-time public servants and stated:

“No provision of the Ethics Act disqualifies part-time public servants from accepting any particular employment position. The Act does place employment limitations on full-time public servants, but takes a different approach for part-time public servants, most of whom must balance their public responsibilities with the need to make a living and support their families.

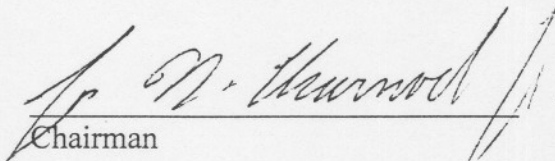
The Ethics Act acknowledges the potential for conflict involved in balancing public and private responsibilities and directs that part-time public servants avoid such conflict by not taking official action on matters in which they have a personal interest. This concept is supported by the Act’s prohibition against public servants using their public positions for their own private financial gain, or that of another. Together they serve to limit the potential for conflict of interest inherent in government which relies heavily on part-time public servants.”

It is clearly a problem for public servants to use the influence of their public positions for their own private financial gain. It would be a problem if the Legislator used the influence of his Legislative position in an attempt to affect the actions of University personnel in regard to his candidacy for the Director's position or to enhance his benefits if he were to be hired.

In an earlier opinion, A.O. 99-23, the Commission expressed concern with the potential for conflict inherent in a legislator, whose Legislative position gave him the power to influence the State's distribution of federal grant money, accepting employment which paid him to facilitate the acquisition of those funds. The Legislator should take this opinion into account, as to federal and State grants, should he be hired as Director position and continue to serve in the Legislature.

The Commission notes that Article 6, Section 13 of the West Virginia Constitution provides that: "No person holding any other lucrative office or employment under this State, the United States or any foreign government ... shall be eligible to a seat in the Legislature." This and the provisions of the federal Hatch Act may have a bearing on whether the Legislator could continue to serve in the Legislature, if he were employed as the Institute's Director.

However, no provision of the Ethics Act disqualifies the Legislator from consideration for the Director's position and it would not be a violation of the Ethics Act for him to continue to serve in the Legislature, if he were hired by the University to serve as the Institute's Director. If he did so, he should make every effort to avoid taking official legislative action on matters which uniquely affected the University.


Chairman