

ADVISORY OPINION NO. 99-23

Issued On October 7, 1999 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **State Legislator** asks whether he may be employed as an administrator by a county board of education.

FACTS RELIED UPON BY THE COMMISSION

This is a reexamination of a request considered and tabled at an earlier Commission meeting. At the time he submitted his request for an advisory opinion, the Requester was employed as a public school teacher. He has since accepted a job as Adult Education/Community/Grant Specialist for the Board of Education by which he was employed. He appears well qualified for the position.

The posted job description explained that one of the position's four principal goals is "To explore and secure resources for county grants." It required the successful candidate to "Write grant proposals to obtain local, **state** and federal monetary assistance." and to "Actively seek and gain support for the work/plans of the ... County Board of Education." and "Serve as advisor to citizens committees and as advisor to governmental agencies."

The Requester serves in a prominent position in the Legislature, a position which gives him significant influence over public education legislation and the activities of State public school system. The Ethics Commission expressed concern about the Requester accepting a job which paid him to obtain **State** grants for his employer - grants over which his legislative position would give him significant direct or indirect influence.

Upon learning of the Commission's concern, the County Board of Education by which the Requester is employed issued a "Resolution And Directive" which states that the Requester "is not to submit, process, monitor, direct or advance any state grants from any state agency as part of his recent appointment" and he "is only to serve as an advisor to local county governmental agencies, not state agencies or legislative committees."

In addition, the Requester has provided information from the State Department of Education which makes it clear that the distribution of federal grant money may not be influenced by members of the Legislature. The federal funds are distributed to the county school boards through the State Department of Education. These funds are included in the Department's budget request submitted to the Legislature, and the Legislature includes the amount appropriated for federal funds in the budget for the year as a matter of routine. Most amounts are determined by a formula which affords no discretion at the State level. A small portion of federal funds is distributed by the Department

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia 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...

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The principal provision of the Ethics Act's code of conduct is a prohibition against public servants using their public positions, or the influence of those positions, for their own private gain, or the private gain of another. This provision states, however, that performing "usual and customary constituent services, **without compensation**" is not a prohibited use of office for private gain.

The fundamental work of Legislators is advancing their constituent's interests, financial and otherwise. In some instances they may work to advance the interests of their employers or business associates who are also their constituents. This use of the influence of their public position is an integral and legitimate part of their public work, so long as they are not compensated beyond their legislative salaries for doing so.

If they are compensated for doing so, it is a different situation. In Advisory Opinion 91-90, the Commission ruled "It would be a violation of the Ethics Act for [a] Legislator to enter into an employment contract which provided payment in exchange for introducing and advocating legislation in the legislature...."

The introduction and advocacy of legislation is a vital constituent service which is to be provided without additional pay from interested parties. A legislator may not sell services which are a part of the official responsibilities of office.

The Requester's responsibilities as Legislator include working to serve the public school needs of his district. Because such work is a part of his normal constituent services, the Commission was concerned by the prospect of him being paid by the county school system to seek and obtain State grants. The Commission's concern in this regard has been resolved by the School Board's revision of the job description to exclude all involvement in, or responsibility for, State grants.

The Commission was also concerned about the Requester being paid by the county school system to facilitate its efforts to obtain federal monetary assistance, if his Legislative position gave him the power to influence the State's distribution of federal grant money to public schools.

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

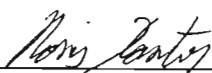
“No provision of the Ethics Act disqualifies part-time public servants from accepting any particular employment position. The Act does place employment limitations on full-time public servants, but takes a different approach for part-time public servants, most of whom must balance their public responsibilities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

Cases arise in which an inescapable conflict exists between the public responsibilities of a part-time public servant and the demands of a second position, public or private. In such a situation, where the public servant cannot be expected to perform both positions without creating either substantial problems or the appearance of impropriety, both position may not be held.”

If the Requester’s Legislative position gives him the power to influence the State’s distribution of federal grant money, it would be a violation for him to accept a job which paid him to facilitate acquisition of those funds. The two positions would create an inescapable conflict. It would also be a violation for the Requester, because of his private employment, to use the influence of his Legislative position in an attempt to secure federal grant funds for his employer, if it were a part of his private job description.

However, based on the documentation provided by the Requester from the West Virginia Department of Education that his legislative position does not allow him to influence the distribution of federal grant funds, the Commission finds that it is not a violation of the Ethics Act for the him to be employed by the County Board of Education in this administrative position, as it is revised by the Board’s August 11, 1999 “Resolution and Directive”.



Chairman