

ADVISORY OPINION NO. 97-07

Issued on March 6, 1997 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

Chief Tax Deputy

OPINION SOUGHT

Is it a violation of the Ethics Act for a Chief Tax Deputy to perform private accounting services?

FACTS RELIED UPON BY THE COMMISSION

The Chief Tax Deputy is responsible for overseeing the Sheriff's duties as the Treasurer for the County. His duties include the collection of real and personal property taxes and other fees due the County and depositing those collections into the appropriate accounts. If a taxpayer fails to pay a tax, the Chief Deputy prepares and publishes delinquent tax listings and either collects the delinquent taxes or sells the property at public sale. The Chief Tax Deputy also administers guardianships and conservatorships as assigned by the court system.

The requester is also a CPA. He has two clients for whom he has provided four accounting activities for pay:

- 1.) A non-profit, tax exempt corporation whose executive director is not a County resident. The company does not own property and is not taxable.
- 2.) Two closely held for-profit corporations whose shareholders are County residents. Both corporations own property in the County that is also subject to taxation.
- 3.) A closely held for-profit corporation whose stockholders are County residents. The corporation does not own property in the County.

The requester is concerned to establish whether he may continue to provide accounting services to these entities for compensation.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(h) provides

(1) No full-time official or 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.

(2) Within the meaning of this section, the term "employment" includes professional services and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor; "seek employment" includes responding to unsolicited offers of employment as well as any direct or indirect contact with a potential employer relating to the availability or conditions of employment in furtherance of obtaining employment; and "subordinate" includes only those agency personnel over whom the public servant has supervisory responsibility.

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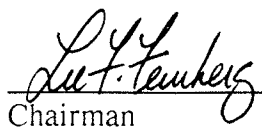
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The Ethics Act, at WV Code 6B-2-5(h), prohibits full-time public servants from seeking or accepting employment with any persons regularly subject to their personal regulatory authority or the regulatory authority of their subordinates.

In A.O. 97-04 the Ethics Commission ruled that State Troopers performed a variety of functions, many of which were not regulatory in nature. Again in A.O. 96-37 the Commission found that "the mere fact that the city police department provides routine police services to the festival organization, as it would similar events staged within the City, does not subject the festival commission to the 'regulatory' authority of the city police chief or his subordinates."

In this case the Commission finds that the Chief Tax Deputy does not regulate all taxpayers in a given County when he or his subordinates merely perform the ministerial functions of collecting taxes and fees. Therefore, it would not be a violation of WV Code 6B-2-5(h) for the Chief Tax Deputy to continue providing private accounting services to his clients provided they have not been delinquent in paying taxes and fees owed to that County.

In the event one of the clients becomes delinquent in paying taxes or fees, the requester would have to terminate his employment with that client and ensure that his office's responsibilities to enforce collection are carried out as required by law.


Chairman