

**ADVISORY OPINION NO. 97-12**

**Issued On May 1, 1997 By The**

**WEST VIRGINIA ETHICS COMMISSION**

**PUBLIC SERVANT SEEKING OPINION**

A State Official

**OPINION SOUGHT**

Is it a violation of the Ethics Act for a State Official to continue to receive a "retirement" stipend from a Bank while in public service?

**FACTS RELIED UPON BY THE COMMISSION**

A newly elected State Official has served on a Bank Board for thirty-five years. In December, 1996, he was awarded an emeritus membership by that Board. This membership is an honor which is bestowed on long-serving Board members.

As an emeritus member of the Bank Board, the State Official is no longer entitled to vote on issues before the Board, but he does receive a stipend regardless of whether he attends the meetings. The State Official does not intend to attend any meetings of the Board while he is in office, but would like to continue to receive his "retirement" stipend.

**PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

West Virginia Code 6B-2-5(h)(1) 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.

West Virginia Code 6B-2-5(b)(1) states 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.

West Virginia Code 6B-1-2(c) states in pertinent part that...the state government and its many public bodies and local governments have many part-time public officials and public employees serving in elected and appointed capacities; and that certain conflicts of interest are inherent in

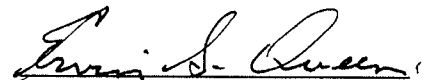
part-time service and do not, in every instance, disqualify a public official or public employee from the responsibility of voting or deciding a matter; however, when such conflict becomes personal to a particular public official or public employee, such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

**ADVISORY OPINION**

The Ethics Commission has determined that no provision of the Ethics Act would prohibit a newly elected State Official from continuing to receive a "retirement" stipend from a Bank while he is in public service.

This stipend is payment for services rendered in the past. In Advisory Opinion 97-02 the Commission held that accepting compensation or benefits that were earned prior to entering public service did not constitute "employment" as that term is used in WV Code 6B-2-5(h)(1).

Pursuant to WV Code 6B-2-5(b)(1) and 6B-1-2(c), the requester should not take any official action which uniquely affects the Bank. This prohibition would not prevent him from taking official action which affects the Bank only as a member of a larger class of similarly affected entities.

  
Chairman