ADVISORY OPINION NO. 2016-02

Issued on January 7, 2016, by

THE WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **former employee of the West Virginia Legislature** asks whether he must wait one year subsequent to the termination of his employment to register as a lobbyist.

FACTS RELIED UPON BY THE COMMISSION

The Requester is a former employee of the Legislature. He was employed on a per diem basis. He worked in the office of the minority leader for one of the chambers during the legislative session. His job title was Research Analyst.

The presiding officer of this chamber has ultimate decision-making authority for personnel matters and other matters involving the day-to-day operations of the chamber. The presiding officer employs a chief counsel who, according to information supplied by the Requester, "largely handles the functions typically associated with a chief of staff for the majority party."

The clerk of this chamber also participates in decisions involving the day-to-day administration of the chamber and personnel matters. For example, the clerk approves leave requests.

There are various committees within the chamber. These committees have their own staff. The presiding officer, majority leader and minority leader also have their own staff. The minority leader is elected by the caucus and has the authority to hire one assistant, one attorney and two research analysts. Before hiring someone, the minority leader must seek and receive final approval for the hire from the presiding officer and the clerk.

The minority leader's attorney holds daily morning meetings with the staff in this office. At these meetings the attorney outlines the tasks for the day. The staff members work independently throughout the day. Other members of the minority party may request that the staff members research an issue. These requests may be given directly to the research analysts or to the minority leader's attorney, who then assigns the research project to a member of the team.

If problems or questions arise, the practice is for staff members to bring these matters to the attention of the attorney. At the conclusion of each day, the attorney normally meets with the minority leader to get direction from him on such matters.

CODE PROVISION RELIED UPON BY THE COMMISSION

W. Va. Code§ 6B-3-2(e) reads in relevant part:

> The following public officers or employees may not, during or up to one year after the termination of their public employment or service, be allowed to register as lobbyists:
>
> (3) Will and pleasure professional employees of the Legislature under the direct supervision of a member of the Legislature;
>
> (4) Will and pleasure professional employees of members of the Executive Department under the direct supervision of the Executive Department officer and who regularly, personally and substantially participates [sic] in a decision-making or advisory capacity regarding agency or department policy;

ANALYSIS

The Ethics Act prohibits certain public officers and employees in state government from registering as a lobbyist for one year subsequent to the termination of their public employment or service. W.Va. Code§ 6B-3-2(e). *See also* Advisory Opinion 2015-02.[1] This limitation is commonly referred to as a "revolving door" provision.

The limitation applies to various categories of public servants including "will and pleasure professional employees of the Legislature under the direct supervision of a member of the Legislature." W.Va. Code§ 6B-3-2(e)(3). The Requester asks whether the limitations of this section apply to him.

The Commission has previously considered the application of this statute. The Commission held in Advisory Opinion 2012-25 that a chief inspector for a water and waste management agency was not subject to the prohibition against registering as a lobbyist because he did not report directly to a member of the Executive Department, but rather reported directly to an employee of the agency that employed him. *Id.* at 4.

The Commission held in Advisory Opinion 2015-02 that an attorney previously employed by the Legislature was not subject to the one-year waiting period. The Commission found the limitations did not apply as the attorney in question did "not report directly to a member of the Legislature, but to the Chief Counsel of the committee to which he is appointed ... " *Id.* at 2.

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[1] W.Va. Code§ 6B-3-2(e) reads in relevant part that the limitation on registering as a lobbyist is "during or up to one year after the termination of ... public employment or service." The Ethics Commission clarified in Advisory Opinion 2015-02 that the waiting period is for "one full year subsequent to an affected employee or officer's termination of public employment or service." *Id.* at 2.

Similarly, here the Commission holds that the Requester is not subject to the one-year waiting period as he is not under the direct supervision of the minority leader. Instead, on a day-to-day basis he is under the direct supervision of the minority leader's attorney.

In conclusion, the Requester, who was formerly employed by the Legislature as a Research Analysist, does not have to wait one year subsequent to the termination of his employment with the Legislature to register as a lobbyist.

This Advisory Opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester must contact the Commission for further advice as it may alter the analysis and render this opinion invalid.

This Advisory Opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, et seq., and does not purport to interpret other laws or rules. In accordance with W Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked, or the law is changed.

/s/ Robert J. Wolfe, Chairperson
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