

ADVISORY OPINION NO. 94-29

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON NOVEMBER 3, 1994

GOVERNMENTAL BODY SEEKING OPINION

General Manager of a Division of a State Authority

OPINION SOUGHT

Is it a violation of the Ethics Act for two employees of a State Division who own a private company which offers satellite uplink services to contract with their public employer to provide such services?

FACTS RELIED UPON BY THE COMMISSION

The requesting governmental agency is a Division of the Educational Broadcasting Authority, a State agency. Two employees of the Division also own a private company which offers satellite uplink service. One is the Division's Manager of Engineering Operations. His public responsibilities include the broadcast master control facilities and providing assistance with the operation and maintenance of the transmission facilities. The second is the Division's Systems Manager and is directly responsible for the operation, maintenance and personnel supervision of the transmission facilities which consist of the main transmitter, translators, satellite downlink equipment, and interconnecting microwave equipment. The Division has stated that uplinking is not a normal function of the employees.

Although the private company offers uplink service, its ability to do so is limited by its lack of equipment and production facilities. These employees have proposed that their private company enter into a contract agreement with their public employer. Under the terms of the proposed contract their private company would place its portable satellite dish and uplink equipment at the station and, in conjunction with the Division, offer uplink services.

In return, the Division would provide the company with facilities and services such as continuous electric power and air conditioning for the uplink equipment, VCRs for playback of material to uplink, production facilities such as a room, camera, and crew to feed or record material to uplink. The Division's programming traffic staff would also take inquiries and schedule the uplinks.

A rate schedule would be mutually established and the profits derived from this service would be split between the Division and the private company. The precise nature of the split would be subject to negotiation between the private company and the State Division.

These two public employees would schedule vacation time to set up, operate and shut off the equipment. They would also use vacation time for servicing and maintaining their equipment and for handling any inquiries or scheduling problems.

If the Commission approves the proposed arrangement, the final decision on behalf of the Division regarding the satellite uplink project would be made by the Executive Staff, Department Heads and the Executive Director of the Division.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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.

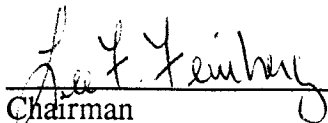
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Private Gain

Pursuant to WV Code §6B-2-5(b)(1), a public employee may not use his office or the resulting prestige for his own private gain or for the private gain of another. The public employees will gain financially if the Division enters into a contract with their private company. It is not apparent that the Division would have considered the proposed satellite uplink system if the employees had not originally instigated it. Since both employees are managers for the Division, they are in a unique position of being able to persuade or influence the Division to participate in this proposed project.

Further, it is clear from the facts presented that it is essential for the private company to procure the services of and obtain access to the equipment of the Division in order to merchandise its satellite uplink services to the public. Obviously, such action would result in private gain for the public employees by furthering the interests of their private company through the enhancement or expansion of the capabilities of their company.

It is the opinion of the Commission that it would be an improper use of the employees' public employment position for such employees to initiate or propose the establishment of a satellite uplinking system which, if accepted by the Division, would be conducted by the employees' private company and result in private gain to them.


Chairman