

**ADVISORY OPINION NO. 95-13**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON JUNE 1, 1995**

**PUBLIC SERVANT SEEKING OPINION**

School Psychologists

**OPINION SOUGHT**

- 1.) Is it a violation of the Ethics Act for the requesters to provide, without solicitation, private psychological services to students they serve in the course of their public school employment?
- 2.) Is it a violation of the Ethics Act for the requesters to provide, without solicitation, private psychological services to students they do not serve in the course of their public school employment?
- 3.) Is it a violation of the Ethics Act for the requesters to provide, without solicitation, private psychological services to the parents of students they may or may not serve in the course of their public school employment?
- 4.) Is it a violation of the Ethics Act for the requesters to provide, upon the request of a parent, a referral for their child for private psychological services?
- 5.) Is it a violation of the Ethics Act for a school psychologist to provide a business card from his part-time private employer upon learning from a parent that a child has a phobia which is treatable?

**FACTS RELIED UPON BY THE COMMISSION**

Full-time school psychologists are interested in obtaining part-time outside employment in private practice. This work would be performed during evenings, weekends, and summers. The outside employment they envision would be either as employees of existing private practices or as owners or partners of a firm. In the latter case the firm would consist of school psychologists employed by school boards in adjacent counties.

**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...office or the prestige of his...office for his...own private gain or that of another person.

West Virginia Code §6B-2-5(e) states that no present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him...in the course of his ...official duties nor use such information to further his... personal interests or the interests of another person.

Effective June 8, 1995, West Virginia Code §6B-2-5(h) will provide:

(1) No full-time official or full-time public employee may seek employment with, be employed by...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;...

(5) A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public job responsibilities.

### **ADVISORY OPINION**

Two provisions of the Ethics Act are critical to a resolution of the questions posed. First, WV Code §6B-2-5(e) prohibits public servants from disclosing or using confidential information to further personal interests. Therefore, the requesters may not use information obtained in the course of their public position, from students or other sources, to obtain private clients for themselves or the firm that employs them part-time.

Second, WV Code §6B-2-5(b)(1) prohibits public servants from using their positions for their own private gain or for the private gain of another. The Commission has held that this section of the code of conduct bars public servants from selling privately any service they are paid to provide during the course of their public employment. (See e.g. A.O. 92-43 and A.O. 92-45) This principle will be codified at WV Code §6B-2-5(h)(5) on June 8, 1995.

Therefore, before these public servants can engage in private practice they must have a clear understanding of what their particular duties are and what services they are expected to provide in their positions as employees of boards of education.

Armed with such an understanding of their public job responsibilities they will then know what services they may not provide privately to the students they may serve in their public positions.

1.) and 2.) As employees of private psychological practices, the requesters would like to provide psychological services to students whom they have not solicited for such services. The children who receive these services may include students whom the requesters serve in the course of their public employment as school psychologists.

The requesters may not provide students any services that they are expected to provide to those students in the course of their school employment.

However, it would not be a violation of the Ethics Act for the requesters to provide, without solicitation, private services to students they serve in the course of their public school employment, **provided** such services are **not** considered part of their contractual responsibilities to the school board.

The requesters could provide private services to students who do not attend the schools located within the area of responsibility of that individual school psychologist. This determination is subject to the limitations stated elsewhere in this opinion pertaining to: no use of confidential information; no use of public position for the private gain of another; and no improper referral of students or parents.

3.) As employees of private psychological firms, the requesters would like to provide psychological services to parents of school age children in cases where they have not solicited the parents for such services. The parents who might receive those services may have children who receive the school psychologist services from requesters.

The Ethics Commission has analyzed the facts presented in light of the statutory violations contained in the Ethics Act. Nothing in the Ethics Act would prevent a school psychologist, working part-time in a private practice, from providing unsolicited professional services to the parent of a student in the school system which employs that school psychologist.

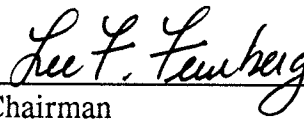
4.) Requesters ask if they may provide referrals for psychological services to parents seeking such a referral for their child. WV Code §6B-2-5(b)(1) prohibits public servants from using their position for their own private gain or for the private the gain of another. This provision would not prohibit a school psychologist from merely including a firm that employed him or her part-time in a comprehensive listing of **all** potential providers. However, any attempt to steer a parent to that firm could amount to a use of office for private gain.

Therefore, any response to a request for service referrals must avoid any preferential treatment toward the requesters' private employing firm. A referral which provides the names of **all** providers of the requested services who are located within the county could include the name of the firm which privately employs the school psychologist provided that the requester does not disclose the fact that he is employed by that firm.

The Commission notes that any **selective** listing of possible service providers for such referrals, however, should omit the private firm with which the requester is associated.

5.) The requesters also inquire whether they could tender a personal business card to a parent who informs them that a child has a phobia which the psychologist considers treatable through professional counseling. Such action would also constitute use of public office for private gain and would violate WV Code §6B-2-5(b)(1).

The requester's last two questions seek the Commission's opinion on matters that are too speculative and lacking in sufficient detail. Consequently the Commission is unable to answer those inquiries at this time. If a specific situation arises, the Commission would be willing to address any potential limitations arising from the provisions of the Ethics Act or WV Code §61-10-15.

  
Chairman