

ADVISORY OPINION NO. 95-33
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON AUGUST 3, 1995

PUBLIC SERVANT SEEKING OPINION

A State employee

OPINION SOUGHT

Is it a violation of the Ethics Act for a public employee to seek employment with a consulting firm?

FACTS RELIED UPON BY THE COMMISSION

The requester is an employee in a State regulatory agency. His public position requires him to review applications submitted by entities subject to the regulatory authority of his agency. He would like to discuss full-time employment outside state government with an engineering consulting firm. The private work for the consulting firm would involve preparation of the types of applications he reviews in his public position.

In his official capacity neither the requester nor any subordinate has ever taken regulatory action on any matter involving the consulting firm. Although it is likely that clients of the consulting firm would be subject to the regulatory authority of the requester's state agency, the consulting firm has not conducted business or worked in the region that falls within the requester's area of public responsibility.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(h) provides in pertinent part that...(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.

(3) A full-time public official or full-time public employee who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the prohibition contained in subsection (1). The Ethics Commission shall by legislative rule establish general guidelines or standards for granting an exemption, but shall decide each application on a case-by-case basis.

(4) A full-time public official or full-time public employee may not take personal regulatory action on a matter affecting a person by whom he or she is employed or with whom he or she is seeking employment or has an agreement concerning future employment...

ADVISORY OPINION

West Virginia Code §6B-2-5(h) prohibits a full time public servant from seeking employment with or being employed by any "person" who has a matter currently before that public servant, or his subordinate, or by any "person" who had a matter on which that public servant or a subordinate took official action in the preceding twelve months.

The requester would like to discuss full-time employment outside state government with an engineering consulting firm. The private work for the consulting firm would involve preparation of the types of applications he reviews in his public position.

Although it is likely that some clients of the consulting firm may be subject to the regulatory authority of the requester's state agency, the consulting firm does not conduct business or work in the region that falls within the requester's area of public responsibility. Furthermore, in this instance the engineering consulting firm is the "person" offering employment to the requester. This corporation is a separate legal entity.

In this instance, the pivotal factor is that neither the requester nor any of his subordinates have taken regulatory action with regard to the engineering consulting firm in the past twelve months and that the firm does not have a matter currently pending before them.

Therefore, it would not be a violation of WV Code §6B-2-5(h) for the requester to discuss, and eventually accept, employment with the consulting firm.


Chairman