ADVISORY OPINION 2016-01

Issued on January 7, 2016, by

THE WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **City** asks whether an engineering firm employee may also serve as its City Engineer under the provisions of 7 CSR 1-12.4(g).

FACTS RELIED UPON BY THE COMMISSION

The Commission has not previously had the occasion to address 7 CSR 1-12.4(g). This regulation is found in the "Rules Governing the West Virginia Board of Registration for Professional Engineers." 7 CSR 1-1 through 1-17. These rules set forth the standards for the regulation and conduct of professional engineers including, but not limited to, application and examination requirements, classifications of registration, continuing education and rules of professional responsibility. *Id.*

This Advisory Opinion is sought pursuant to 7 CSR 1-12.4(g) which provides, in relevant part:

> Registrants serving as members, advisors, or employees of a governmental body or department, who are the principals or employees of a private concern, shall not participate in decisions with respect to professional services offered or provided by the private concern to the governmental body which they serve *unless their participation is approved by the West Virginia Ethics Commission.*

(emphasis added).

In 1999, Requester entered into an Engineering Services Agreement with a private engineering firm (hereinafter "firm"). Pursuant to the terms of that agreement, the firm is to, among other things, provide Requester with a professional engineer to serve as the City Engineer. The firm designated the current City Engineer in 2001. Requester additionally represents that the City Engineer is not separately compensated as any billings under the agreement are paid to the City Engineer's firm.

The Requester maintains that the firm's employee designated as the City Engineer "does not, and has never participated in any decision-making on behalf of the City with respect to professional services to be provided by any private entity," including the firm by which he is employed or any other engineer. Requester further maintains that the

City Engineer has not participated in preparing proposals for individual projects to be provided by his firm pursuant to the terms of the agreement with the City.

From the information provided, the scope of services from private firms is defined by the City's department head. This is done in conjunction with the assistant city manager, who often acts as the City's project manager under the supervision of the City Manager. The request for proposal documents and legal advertisements are prepared by the City's Director of Finance. Requester further represents that the City Engineer does not supervise any other contractor hired by the City.

PROVISIONS RELIED UPON BY THE COMMISSION

7 CSR 1-12.4(g) provides:

> Registrants shall not solicit or accept a professional contract from a governmental body on which a principal or officer of their organization serves as a member. Conversely, registrants serving as members, advisors, or employees of a governmental body or department, who are the principals or employees of a private concern, shall not participate in decisions with respect to professional services offered or provided by the private concern to the governmental body which they serve unless their participation is approved by the West Virginia Ethics Commission.

ADVISORY OPINION

The Ethics Commission's authority over the conduct of licensed engineers is narrowly tailored and limited to authorizing conduct otherwise prohibited under 7 CSR 1-12.4(g). This provision prohibits registrants who serve a governmental body from participating in decision-making with respect to services provided by the firm employing the registrant unless this Commission approves such participation.[1]

In the instant situation, however, the Requester does not ask this Commission to approve the City Engineer's participation in any type of decision-making with respect to the firm by which he is employed. Requester in fact represents that the City Engineer does not participate in such decisions. **Therefore, in the absence of the City Engineer participating in the types of decisions contemplated by 7 CSR 1-12.4(g), the Commission finds that the Requester requires no approval from the Ethics Commission.**

[1] It is notable that 7 CSR 1-12.4(g) does not contain any criteria and/or standards by which the Ethics Commission is to determine whether such an approval is warranted in any given case.

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 7 CSR 1-12.4(g) and does not purport to interpret other laws or rules. In accordance with W Va. *Code § 68-2-2, this Opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended, revoked or the law is changed.*

/s/ Robert J. Wolfe, Chairperson
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