

**ADVISORY OPINION NO. 93-17**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON JUNE 3, 1993**

**PUBLIC SERVANT SEEKING OPINION**

Director with the Department of Tax and Revenue

**OPINION SOUGHT**

Is it a violation of the Ethics Act for the Director of a Division of the Department of Tax and Revenue to accept part-time employment as a mediator in disputes involving West Virginia taxpayers?

**FACTS RELIED UPON BY THE COMMISSION**

The Requestor is employed full-time by the State Department of Tax and Revenue as the Director of a Division. This position primarily involves hearing and deciding contested state tax cases.

The requestor is also a licensed attorney and a trained mediator. The use of alternative dispute mechanisms, including mediation services, is on the increase nationally and in this state. The requestor would like to accept part-time employment to mediate civil disputes involving West Virginia taxpayers pending in state and federal courts in West Virginia. The parties to the disputes would be West Virginia taxpayers, but the cases to be mediated would not involve state tax litigation.

**PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

West Virginia Code §6B-5(h)(1) provides in pertinent part that no full-time public official or full-time public employee who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow himself or herself to be employed by any person who is or may be regulated by the governmental body which he or she serves while he or she is employed or serves in the governmental agency. The term "employment" within the meaning of this section includes professional services and other services rendered by the public official or public employee whether rendered as an employee or as an independent contractor.

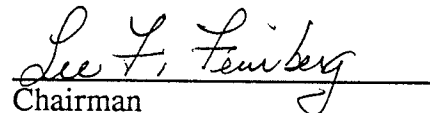
**ADVISORY OPINION**

Pursuant to WV Code 6B-2-5(h)(1), full-time public servants who exercise policymaking, nonministerial or regulatory authority may not seek or accept employment with any person who is or may be regulated by their governmental agency.

The requestor's position as the Director of Division of the Department of Tax and Revenue and adjudicator of tax cases within the Department clearly provides the authority contemplated by WV Code §6B-2-5(h)(1) and makes the restriction against seeking or accepting outside employment applicable.

The broad language of WV Code §6B-2-5(h)(1) compels the conclusion that employees of the Department of Tax and Revenue, with the requisite authority described above, are prohibited from seeking employment from any person in this State. This result is inevitable since all persons are regulated by this Department. Since the Department of Tax and Revenue's regulatory authority is so broad, it is not necessary for the Commission to determine whether the requestor would be employed by either the individual parties involved in the dispute being mediated or a the law firm which represents a party. In either case, the employment would be with persons who are regulated by the requestor's governmental employer.

Therefore it would be a violation of the Ethics Act for the requestor to seek or accept part-time employment as a mediator in disputes involving taxpayers.

  
Chairman