

ADVISORY OPINION NO. 93-39

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON NOVEMBER 4, 1993

GOVERNMENTAL BODY SEEKING OPINION

A Public Employee

OPINION SOUGHT

Is it a violation of the Ethics Act for a public employee to represent a client before his former governmental agency?

FACTS RELIED UPON BY THE COMMISSION

The requestor was the Executive Director of a public Authority until June 1993. In July 1993 he was assigned to the position of Director of Institutional Advancement for this Authority. In this new position his responsibilities include researching and identifying new revenue potential for the Authority and developing a public relations campaign. He also researches new markets and marketing strategies including co-production funding for radio and television programs and the development of industrial and commercial media productions. The requestor has stated that by January, 1994 he will no longer be employed by the Authority.

The requestor is considering becoming a communications consultant and has stated that he will establish and operate the consulting company on his own time and use his personal resources.

A potential client would like to retain the requestor's services to assist in the creation and distribution of a video tape series. While serving as the consultant for this client, the requestor would approach a public television station regarding the production of the program. This station is a division of the Authority with which the requestor is currently employed. The station is licensed by such Authority and the funds for the operation of the station are public monies channelled through this Authority. However, the requestor has stated that the television station would not be required to seek approval for this project from the Authority.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-1-3(i) defines "Public Official" as any person who is elected or appointed and who is responsible for the making of policy or takes official action which is either ministerial or nonministerial, or both, with respect to (i) contracting for, or procurement of, goods or services, (ii) administering or monitoring grants or subsidies, (iii) planning or zoning,

(iv) inspecting, licensing, regulating or auditing any person, or (v) any other activity where the official action has an economic impact of greater than a de minimis nature on the interest or interests of any person.

West Virginia Code §6B-2-5(g)(1) states in pertinent part that...No elected or appointed public official...shall, during his or her public service or public employment or for a period of six months after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate regulations appear, in a representative capacity before the governmental entity in which he or she serves or served or is or was employed in the following matters:

(E) To influence the expenditure of public funds.

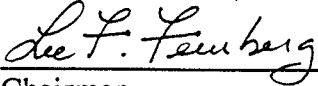
ADVISORY OPINION

West Virginia Code §6B-2-5(g)(1) bars elected and appointed public officials from representing a person before their former public agency for a period of six months after the termination of their public employment. It is clear that the requestor proposes to "represent" a "person" since he will be communicating with a division of the Authority on behalf of a private client, which is a legal "person".

Until June 1993, the requestor served as the Executive Director of a public Authority and was responsible for taking official action and making official policy on behalf of the Authority. Therefore, he would be prohibited from appearing in a representative capacity before this Authority for a period of six months after the termination of his service as the **Executive Director** of such Authority.

In his current position as the Director of Institutional Advancement for this Authority, the requestor is not responsible for taking or recommending official action. His responsibilities include researching and identifying new revenue potential, new markets and marketing strategies and developing a public relations campaign. Consequently, the requestor is not currently a "public official" as defined within the Ethics Act.

Therefore, the Commission finds that the requestor, as the **Director of Institutional Advancement**, is not subject to the six month prohibition contained in WV Code §6B-2-5(g)(1) and may appear in a representative capacity before the Authority or one of its divisions after the six month prohibition which arose from his service as the Executive Director of the Authority expires in January 1994.


Chairman