

**ADVISORY OPINION NO. 93-51**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON FEBRUARY 3, 1994**

**GOVERNMENTAL BODY SEEKING OPINION**

A State Employee

**OPINION SOUGHT**

Is it a violation of the Ethics Act for a public employee to moonlight as an independent rehabilitation practitioner while maintaining state employment with the Division of Rehabilitation Services?

**FACTS RELIED UPON BY THE COMMISSION**

The West Virginia Workers' Compensation Fund has a joint agreement with the Division of Rehabilitation Services whereby Rehabilitation Services accepts rehabilitation assessment referrals from Workers' Compensation. The Workers' Compensation Fund is also one of the largest sources of referrals in the private rehabilitation sector, particularly for individuals who decline Division of Rehabilitation services.

The requestor is a Client Service Supervisor for the State Division of Rehabilitation Services. He would also like to work part-time as an independent rehabilitation practitioner doing disability and rehabilitation assessments for individuals referred to him by attorneys, insurance companies and other organizations.

The requestor has stated that he will not accept referrals on individuals who are active clients of his state agency or individuals who ordinarily would be referred to his agency. He would, however, like to solicit private referrals from the Workers' Compensation Fund.

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

West Virginia Code §6B-2-5(b)(1) states in pertinent part that...a 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(h)(1) states that no full-time public employee who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow himself to be employed by any person who is or may be regulated by the governmental body which he serves while he is employed or serves in the governmental agency.

### **ADVISORY OPINION**

#### **Employment**

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 a Client Service Supervisor for the State Division of Rehabilitation Services does provide him the authority contemplated by WV Code §6B-2-5(h)(1) and makes the restriction against seeking or accepting outside employment applicable. However, his governmental employer regulates neither the Workers' Compensation Fund nor the private individuals seeking rehabilitation services.

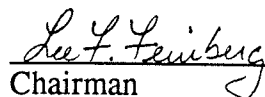
Therefore, it would not be a violation of WV Code §6B-2-5(h)(1) for the requestor to moonlight as an independent rehabilitation practitioner while maintaining his state employment with the Division of Rehabilitation Services.

#### **Private Gain**

Pursuant to WV Code §6B-2-5(b)(1), a public employee may not use his office or the prestige of his office for his own private gain or for the private gain of another. Therefore, the requestor may not use his public position as a Client Service Supervisor for the State Division of Rehabilitation Services to influence, obtain, increase or promote his business as an independent rehabilitation practitioner. Further, the requestor may not use public time, equipment and resources for such private activities. The Commission is of the opinion that the requestor must exercise the utmost care to avoid violations of this portion of the code of ethics.

The Commission has held that the prohibition against using one's public office for private gain bars the acceptance of private payment for providing information or services which are expected to be provided by the public employee in the course of fulfilling his official job responsibilities.

Therefore, the requestor should clearly state in his private solicitations that he is an employee of the Division of Rehabilitation Services and cannot accept referrals of potential Division of Rehabilitation Services clients.

  
Chairman