

**ADVISORY OPINION NO. 92-49**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON DECEMBER 3, 1992**

**GOVERNMENTAL BODY SEEKING OPINION**

A Public Employee

**OPINION SOUGHT**

Is it a violation of the Ethics Act for a public employee to seek part-time employment with other governmental entities?

**FACTS RELIED UPON BY THE COMMISSION**

The requestor is employed full-time with a State Department. His official responsibilities include the negotiation of agreements for the acquisition of rights of way which involve dealing with all public and some private utilities within the State regarding the relocation of utility facilities for highway construction. Although the relocation costs must be paid by each Utility Company, some are eligible for reimbursement by the State.

Eligibility for such reimbursement is based on compliance with State law. The requestor reviews the Utility's proposed relocation site, any permit forms or agreements, and makes recommendations regarding the location of installations and the reasonableness of the cost of the work involved. The requestor submits these recommendations to his immediate supervisor. The supervisor may then send the report on to his superiors for their required approval. There are at least four additional levels of approval necessary before the State is under any monetary obligation.

During off-duty hours the requestor contracts as a Right of Way Agent for several public service districts, a municipality, and private consultants who do contract work for other states. The requestor's outside work involves acquiring easements for the installation of water and sewer lines on private property.

**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 in pertinent part that...no full-time public official or 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), a full-time public employee who exercises policymaking, nonministerial or regulatory authority may not seek employment with any person who is or may be regulated by his governmental agency.

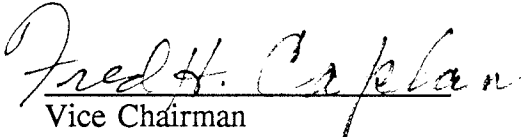
The requestor does have the requisite authority contemplated by this section since he performs nonministerial functions in relation to the relocation of utility facilities for highway construction. Consequently, he may not seek employment with any "person" who is or may be regulated by his governmental agency.

However, WV Code §6B-1-3(f) defines "Person" as "an individual, corporation, business entity, labor union, association, firm, partnership, limited partnership, committee, club or other organization or group of persons". The Commission determined, in Advisory Opinions #91-54, #92-07, #92-30 and others, that since this definition does not include governmental agencies, the prohibition against seeking employment with regulated persons established in WV Code §6B-2-5(h)(1) does not apply to seeking employment with other governmental agencies. Accordingly, under the facts presented it is not even necessary for the Commission to determine whether the requestor's employing State Department is a regulatory agency since all of the requestor's outside employers are other governmental entities such as states, public service districts, and municipalities.

Therefore, it would not be a violation of WV Code §6B-2-5(h)(1) for the requestor to seek or accept part-time employment with other governmental agencies.

The Commission does, however, remind the requestor that pursuant to WV Code §6B-2-5(b)(1), a public employee is prohibited from using his office or prestige for private gain. Therefore, he may not use his position or influence as a public employee for the benefit of any part-time employer. This provision also prevents him from using his position with the State Department to solicit employment with persons who may be regulated by or associated with his governmental agency.

The requestor should consult the Commission's legislative rules on private gain, sections 158-6-5 and 158-6-8, which prohibit use of public time, equipment and resources for private activities.

  
Vice Chairman