

ADVISORY OPINION NO. 92-19

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 4, 1992

GOVERNMENTAL BODY SEEKING OPINION

A Public Employee

OPINION SOUGHT

Is it a violation of the Ethics Act for a full-time public employee to seek part-time employment with an individual who conducts business with the employee's governmental agency?

FACTS RELIED UPON BY THE COMMISSION

The requestor is employed full-time with a State Department as a word processor. Her responsibilities include typing drafts and final copies of letters, memos, reports, newsletters, brochures, and contracts.

State Departments which hold hearings or take depositions often use the services of a court reporter to provide a verbatim account of such hearings and depositions. The court reporter records the hearing then uses the recordings to create a precise and accurate transcript. This transcript is filed and becomes a matter of record which is admissible as evidence.

The requestor's State Department does not employ an in-house court reporter and currently contracts with a private court reporter to provide such services. The private court reporter employs typists to transcribe the recorded hearings and proofread the final product. It is not part of the requestor's public employment duties to perform such tasks.

The public employee would like to seek part-time employment as a typist for the court reporter. This court reporter currently handles hearings for the public employee's State Department, as well as other State and Federal agencies.

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...her office or the prestige of...her office for...her 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...herself to be employed by any person who is or may be regulated by the governmental body which...she serves while...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 employee whether rendered as an employee or as an independent contractor.

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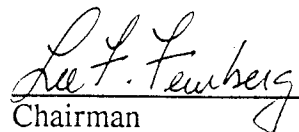
Pursuant to WV Code §6B-2-5(h)(1), a full-time public employee **who exercises policymaking, nonministerial or regulatory authority** may not seek employment with any person who is or may be regulated by her governmental agency.

The requestor's public employment responsibilities includes the operation of word processing equipment to produce draft and final copies of typed materials but do not encompass policymaking, nonministerial or regulatory responsibilities. The Commission therefore finds that the requestor does not have the requisite authority contemplated by this section of the Ethics Act.

Further, the Commission determined in Advisory Opinion #91-83 that the mere fact that a State Department may conduct business with or be responsible for directing or overseeing the actual work product of a "person" it does not necessarily signify that such "person" is regulated by that State Agency.

Therefore, it would not be a violation of the Ethics Act for the requestor to seek part-time employment with a court reporter who, although she conducts business with the requestor's governmental agency, is not regulated by such governmental agency.

The Commission reminds the requestor that pursuant to WV Code §6B-2-5(b)(1), a public employee may not use her office or the resulting prestige for her own private gain or for the private gain of another. Simply, she may not use her public position with the State Department to solicit employment with the court reporter nor use her influence to obtain, increase or promote business for the court reporter. The requestor should consult the Commission's legislative rules on private gain, sections 158-6-5 and 158-6-8, which prohibit more than a de minimus use of public time, equipment and resources for private activities.


Chairman