

ADVISORY OPINION NO. 92-22

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JULY 2, 1992

GOVERNMENTAL BODY SEEKING OPINION

A Public Employee

OPINION SOUGHT

Is it a violation of the Ethics Act for a public employee to serve on an interagency project review panel which may enter into a contract with a company that may employ a close friend of that employee?

FACTS RELIED UPON BY THE COMMISSION

The requestor is employed as an Administrative Assistant with a State Division. As such his duties do not include supervisory responsibilities. The requestor's State Division, along with several other state agencies, will award a joint contract for a statewide assessment project.

Selected representatives from these various state agencies are serving on a project review panel which will select the consultant who receives the contract once a list of potential consultants is compiled. The requestor has served on this panel as a representative for his State Division but plans to relinquish the position.

One of the potential consultants who may submit a proposal for the project employed the requestor's close friend for two years. The friend resigned the employment position and is not currently employed by this consultant. However, the requestor states that the consultant has expressed the possibility of rehiring the friend to work on this project if they are awarded the contract, since the friend has prior employment experience on similar projects.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that...a public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.

ADVISORY OPINION

In considering this request the Ethics Commission has analyzed the facts presented in light of the statutory violations contained in the Ethics Act. The Commission has determined that there is no provision of the Ethics Act which would prohibit a public employee from serving as a member of a interagency review panel.

Voting

However, WV Code §6B-1-2(c) provides that a public official should seek to be excused from voting, deciding or otherwise acting on a matter that has become "personal" to that official.

The Commission considers a matter to be "personal" when the public official has any direct or indirect pecuniary interest in the matter, is affected in a manner which may influence his vote, or when voting would create the appearance of impropriety. The Commission has determined that in order for a public official's recusal to be effective he must physically remove himself from the room during the discussion and decision making process.

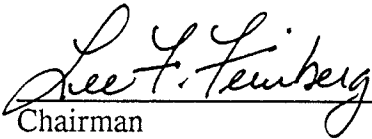
If the Project Review Panel is called upon to consider a proposal submitted by the previous and possibly future employer of the requestor's companion, he should refrain from voting or taking any other action regarding the selection of those Program proposals. Failure to do so could give the appearance of impropriety. Obviously if he resigns from the Panel prior to consideration of the selection, there would be no conflict of interest.

Private Gain

Pursuant to WV Code §6B-2-5(b)(1), a public official may not use his office or its resulting prestige for his own private gain or for the private gain of another. Therefore, the requestor's official status or influence as either a Project Review Panel Member or employee of the Division may not be used to improperly obtain, increase or promote business for the Company which may employ his close friend. Similarly, he may not offer such assistance in exchange for an employment position for his companion.

Confidential Information

Although there is no evidence of a violation before it, the Commission reminds the requestor that WV Code §6B-2-5(e) prohibits a public official from using confidential information acquired during the course of performing official duties to further personal interests or the personal interests of another person. Therefore, the requestor may not use any confidential information acquired as a public servant to assist the Consulting Company in preparing their proposal.


Chairman