

ADVISORY OPINION NO. 92-30

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON AUGUST 6, 1992

GOVERNMENTAL BODY SEEKING OPINION

A State Delegate/Teacher

OPINION SOUGHT

Is it a violation of the Ethics Act for a Legislator to accept a \$100 per day stipend plus meals, mileage and lodging expenses from a State Agency for attending or conducting a training seminar?

FACTS RELIED UPON BY THE COMMISSION

During a special session dealing with education matters, the Legislature added a provision into the law which required all educational administrators to undergo training to properly evaluate teachers. As a legislator, the requestor voted on this issue.

At the same time, a Development Center was established to provide this kind of training for administrators and to also provide training to educators for the Governor's computer program in the public schools. As a legislator, the requestor was involved in the funding for this Development Center which is a State agency.

Approximately 40 educators, including administrators, teachers, central office personnel, and State Department of Education personnel, were trained to teach school administrators proper evaluation techniques. These individuals were selected by a group of representatives from Higher Education, the Principals Association, the WVEA, the WVFT and the State Department of Education. The search group sought individuals who possessed exceptional skills as educators and presenters of programs. While receiving this training, the participants can receive a \$100 per day stipend plus meals, mileage and lodging expenses. As a teacher, the requestor was selected to receive this training.

After completing the training, the requestor must conduct at least three seminars which last approximately 2 1/2 days each. If the requestor is not under the school year contract during the presentation of the seminar he could receive \$100 per day plus meals, mileage and lodging expenses. However, if the seminars are conducted during the school year the requestor is eligible only for reimbursement of meals, mileage and lodging expenses.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(b)(1) states in pertinent part that...a public official...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...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.

West Virginia Code §6B-2-5(k) states in pertinent part that...no public official...shall knowingly request or accept from any governmental entity compensation or reimbursement for any expenses actually paid by...any other 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 per se prohibits the requestor from accepting a \$100 per day stipend plus meals, mileage and lodging expenses from a State Agency for attending or conducting a training seminar.

Pursuant to WV Code §6B-2-5(h)(1), full-time public officials or employees with policymaking, regulatory or nonministerial authority may not seek employment with any person who is or may be regulated by their governmental agency. This provision only prohibits a public official or employee from seeking employment with "persons" who are "regulated" by the public official's or employee's governmental agency. Subsection 6B-1-3(f) of the Ethics Act defines "person" as an individual, corporation, business entity, labor union, association, firm, partnership or other such organization. The Commission determined in Advisory Opinion #91-52 that since the definition does not include governmental agencies the prohibition against seeking employment with regulated persons does not apply to other governmental agencies.

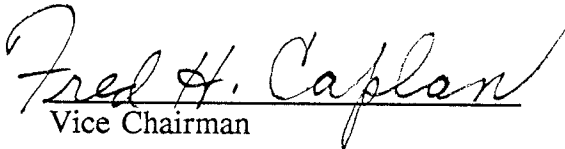
Therefore, it would not be a violation of WV Code §6B-2-5(h)(1) for the requestor to accept a \$100 per day stipend plus meals, mileage and lodging expenses from a State Agency for attending or conducting a training seminar.

WV Code §6B-2-5(k) prohibits a public official or employee from accepting compensation or reimbursement for expenses actually paid by any other person. Therefore, the requestor may not receive his regular teacher's salary and the \$100 stipend for presenting the training course if such course is conducted during the regular school year, while on County time. If the seminars are conducted during the school year the trainer is eligible only for reimbursement of meals, mileage and lodging expenses. The requestor has stated that he would only receive the \$100 per day stipend when he is not under contract during the presentation of the seminar.

Therefore, it would not be a violation of WV Code §6B-2-5(k) for the Legislator to accept a \$100 per day stipend plus meals, mileage and lodging expenses from a State Agency for attending or conducting a training seminar provided such training courses are not presented during normal work hours for which he is compensated as a teacher.

The Commission reminds the requestor that pursuant to WV Code §6B-2-5(b)(1) a public official may not use his office or the resulting prestige for his own private gain. Therefore, the requestor's official status or public position may not be used to improperly influence or obtain a position as a trainer for the State Agency.

The opinion expressed herein is limited to the application of the Ethics Act. Requestor is urged to find out if his employment by the Development Center would constitute employment by the Executive Branch which could jeopardize his seat in the Legislature.


Vice Chairman