

ADVISORY OPINION NO.91-04

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON FEBRUARY 7, 1991

GOVERNMENTAL BODY SEEKING OPINION

A State Delegate/County Employee

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a Delegate to receive a one day paid vacation from a County Board of Education while attending legislative duties and accepting compensation for such duties?

FACTS RELIED UPON BY THE COMMISSION

An employee of a County Board of Education has been elected to the House of Delegates. She has applied for and been granted, an unpaid leave of absence from her teaching position for 59 of the 60-day legislative session.

The Delegate/County employee would like to use an Outside School Environment Day (hereafter referred to as an OSE Day) during the Legislative session for which she will be paid by the County Board of Education.

The OSE Days are designated by the legislature and fall within the 200-day teacher employment term for which teachers are paid. Also, students do not attend class and teachers are not required to report to work on the OSE Days. They are equivalent to paid vacation days.

The Delegate's reason for wanting to use this day to remain on the County Board of Education payroll is that by doing so, she would be able to continue her public employee medical insurance coverage without incurring any additional expense.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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

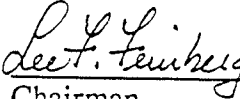
West Virginia Code Section 6B-2-5(k) states in pertinent part that...no public official or public employee shall knowingly request or accept from any governmental entity compensation or reimbursement for any expenses actually paid...by any other person.

ADVISORY OPINION

In considering this request the Ethics Commission has analyzed the facts presented and the pertinent statutory violations contained in the Ethics Act. The Commission has determined that there is nothing contained within the Ethics Act which would prohibit the requestor from using an OSE Day for which she will receive payment from the County Board of Education while performing her duties as a State Delegate.

Pursuant to subsection 6B-2-5(b)(1) of the Ethics Act, a public official may not intentionally use her office for private gain. However, in this instance the OSE Day has been designated by the legislature and is provided to all the teachers in the County. It is not necessary for any teacher to report to work at his or her school that day. Therefore, the teacher would not be receiving this benefit because of her position as a State Delegate.

Subsection 6B-2-5(k) of the Ethics Act prohibits a public official or employee from accepting compensation or reimbursement from a governmental agency for any expenses actually paid by any other person. In the limited facts of this matter it would not be a violation of subsection 6B-2-5(k) of the West Virginia Ethics Act for the Delegate to use an OSE Day while performing her duties as a State Delegate.



Chairman