

ADVISORY OPINION NO. 91-06

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 7, 1991

GOVERNMENTAL BODY SEEKING OPINION

A State Senator

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a part-time State Senator to receive a salary from his regular employment during a leave of absence while he acts as a State Senator?

FACTS RELIED UPON BY THE COMMISSION

A State Senator has requested that his employer outline the Company's leave of absence policy for employees who are legislators.

The intent of the Company's leave of absence policy is to support and encourage employees to participate in public service without causing undue operational problems as a result of the employees' absence. The practice allows the Company to maintain the requisite level of operational support and in return, the employee does not suffer a loss of income.

When an employee of the Company is elected to the State Legislature, the Company will, consistent with maintenance of economical and efficient operations, consider whether to grant such employee a leave of absence as is necessary to allow reasonable time to perform the duties of such office. If such leave is granted, the employee will be paid during the leave of absence at full salary minus any remuneration that accompanies the public office.

The leave of absence would be reviewed prior to the end of each term of office and may be renewed provided that the Company deems such action as appropriate under the conditions existing at that time.

While the employee is considered to be on a leave of absence during the legislative session, the working arrangement with the employee's supervisor would normally require occasional phone contact or weekend visits to the Company by the employee to assist with operational issues.

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...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 Section 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.

West Virginia Constitution Art. 6, §13 states in pertinent part that...no person holding any other lucrative office or employment under this State, the United States, or any foreign government ...shall be eligible to a seat in the Legislature.

ADVISORY OPINION


Pursuant to subsection 6B-2-5(b)(1) of the Ethics Act, a public official may not intentionally use his office for private gain. However, in this instance the Company's leave of absence policy is available to all employees who participate in public service. This benefit is not directed solely at the requestor.

Subsection 6B-2-5(k) of the Ethics Act prohibits a public official from accepting compensation or reimbursement from a governmental agency for any expenses actually paid by any other person. However, the requestor is not receiving payment from his private employer to act as a State Senator. The requestor will receive a salary **minus** any remuneration of the public office. The Legislature, in enacting this section did not contemplate prohibiting a part-time public official who receives a nominal salary from public service from receiving other employment compensation, if available.

Therefore, based on the limited facts presented in matter it would not be a violation of subsection 6B-2-5(k) of the Ethics Act for the requestor to receive a salary from his regular employment during a leave of absence while he acts as a State Senator.

Further, pursuant to the West Virginia Guide to Candidacy which is published by the Secretary of State's Office and is based on the West Virginia Constitution Art. 6, §13, a member of the legislature may not receive a salary as a **State or Federal** employee during the legislative session. The State Senator in question is employed in the **private** sector and therefore, that prohibition would not apply under these circumstances.

In considering this request, the Ethics Commission has analyzed the facts presented and the pertinent statutory provisions contained in the Ethics Act. The Commission has determined that there is nothing contained within the Ethics Act which would prohibit the requestor from receiving a salary from his regular employment in the private sector during a leave of absence at which time he acts as a State Senator.


Fred H. Sablan
Vice-Chairman