

ADVISORY OPINION NO. 91-22

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON APRIL 4, 1991

GOVERNMENTAL BODY SEEKING OPINION

A State Conservation Officer

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a State employee to have an ownership interest in a bail bond and private investigations corporation?

FACTS RELIED UPON BY THE COMMISSION

A State Conservation Officer has an ownership interest in a bail bond and private investigations Company. However, the public employee is not involved in the criminal bonds aspect of the Company.

The requestor's supervisor has indicated that in his position as Conservation Officer, the public employee has access to confidential information stored in the Department of Motor Vehicles registration files which include operators, chauffeurs, commercial driving licenses and revocation of driving privileges. Also, the public employee has access to information in the criminal history files at the Department of Public Safety and the National Crime Information Center that is only available to users of the criminal justice system.

However, in order to obtain the confidential information contained in such files, a law enforcement officer must have the authority or agency approval to obtain this information. Records are maintained by the agency as to what information is requested and from which officer the request was received.

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 office or the prestige of his office for his own private gain or that of another person.

West Virginia Code Section 6B-2-5(e) states in pertinent part that...no present or former public employee may knowingly and improperly disclose any confidential information acquired by him in the course of his official duties nor use such information to further his personal interests or the interests of another person.

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Private Gain

Pursuant to subsection 6B-2-5(b)(1) of the Ethics Act a public employee may not use his office or prestige for his own private gain or for the private gain of another. Therefore, the Conservation Officer may not knowingly and intentionally use his prestige or public employment position in any way to further his private business. Furthermore, he may not solicit clients for his private Bail Bonding and Investigations Company.

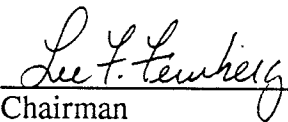
Public employees are not permitted to perform private work during time they are compensated by their government agency, nor may they use government property (such as copiers, computers, vehicles etc...) for personal projects or activities that result in private gain.

Therefore, in summary it would not be a violation of subsection 6B-2-5(b)(1) of the Ethics Act for the Conservation Officer to have an ownership interest in a private company provided he does not use his position to obtain or benefit clients, use government property to assist in the completion of projects for the private company or perform private work during hours which he is compensated by his governmental agency.

Confidential Information

However, the public employee should be especially mindful of subsection 6B-2-5(e) of the Ethics Act which prohibits a public employee from using any confidential information acquired by him during the course of his public employment for his own personal gain or for the gain of another.

Clearly, the public employee may not use any confidential information stored in the Department of Motor Vehicles registration files or in the criminal history files at the Department of Public Safety and the National Crime Information Center to assist his private Company in securing or processing criminal bail bonds or to aid in the Company's private investigatory activities.


Chairman