

**ADVISORY OPINION NO. 91-45**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON JULY 11, 1991**

**GOVERNMENTAL BODY SEEKING OPINION**

An Attorney on behalf of a Member of a City Sanitary Board

**OPINION SOUGHT**

Whether it is a violation of the Ethics Act for an employee of a State Department to be a member of a City Sanitary Board?

**FACTS RELIED UPON BY THE COMMISSION**

The requestor is an appointed, part-time member of a City Sanitary Board. The Sanitary Board is responsible for the custody, administration, operation, maintenance, supervision and control of sewage collection systems that may be constructed within the Municipality.

Also, the requestor is employed by a State Department in the Solid Waste Management Section. His job responsibilities include the review of engineering designs related to solid waste facility applications to ensure compliance with engineering standards, solid waste laws, rules and regulations. He conducts site inspections, field reviews of solid waste facilities to provide technical review and analysis and issues draft permits. In his position with the Waste Management Section of the State Department, the requestor does exercise some policymaking, nonministerial and regulatory authority.

The Assistant Chief of the Solid Waste Management Section of the State Department has stated that the City Sanitary Board is not regulated by this particular governmental agency.

**PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

West Virginia Code 6B-2-5(h)(1) states that no full-time...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...serves while he...is employed or serves in the governmental agency.

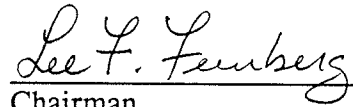
ADVISORY OPINION

Subsection 6B-2-5(h) of the Ethics Act only limits a full-time public employee who exercises policymaking, nonministerial or regulatory authority from seeking employment with, or allowing himself to be employed by any person **who is or may be regulated** by the governmental agency which he serves while he serves in such agency.

The requestor does have the requisite authority as contemplated by this subsection since he performs certain policymaking, nonministerial and regulatory functions as they relate to solid waste landfill facilities.

However, the City Sanitary Board does not own or operate a solid waste landfill and therefore the City Sanitary Board is not regulated by the Solid Waste Management Section of the State Department.

Therefore, it would not be a violation of subsection 6B-2-5(h)(1) of the Ethics Act for an employee of a State Department to be a member of a City Sanitary Board since the Board is not regulated by the requestor's governmental agency.

  
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Chairman