

**ADVISORY OPINION NO. #91-78**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON NOVEMBER 7, 1991**

**GOVERNMENTAL BODY SEEKING OPINION**

A State Delegate

**OPINION SOUGHT**

Whether it is a violation of the Ethics Act for a State Delegate to receive a salary minus his legislative salary from his regular employment during a leave of absence while he acts as a State Delegate?

**FACTS RELIED UPON BY THE COMMISSION**

The requestor is an elected public official serving as a State Delegate. He is also employed by a County Board of Education.

The requestor seeks clarification as to whether it would be a violation of the Ethics Act to accept a salary from the County Board of Education if the Board initiates a policy which provides that it will pay the public official during the leave of absence a full salary minus any remuneration for his legislative service.

**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.

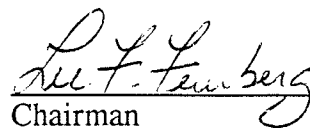
**ADVISORY OPINION**

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 County employer to act as a State Delegate. The requestor will receive a salary **minus** any remuneration of that public office. The Commission determined in Advisory Opinion #91-06 that the Legislature, in enacting this section did not contemplate prohibiting a part-time public official who receives a salary from public service from receiving other employment compensation, if available in an amount reduced by the remuneration received while in the Legislature.

Therefore, based on the facts presented in this 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 Delegate.

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, reduced by the amount of the remuneration he receives for his Legislative service, from his regular employment with the County Board of Education during a leave of absence at which time he acts as a State Delegate.

However, the requestor should be mindful of subsection 6B-2-5(b)(1) of the Ethics Act, which provides that a public official may not intentionally use his office for private gain. The requestor should not use his position as a State Delegate and the resulting prestige to solicit or instigate the initiation of a policy which provides that the County Board of Education would pay the public official during a leave of absence at full salary minus any remuneration that accompanies the public office. Further, the County Board of Education's leave of absence policy must be available to all employees who participate in public service and not directed solely at the requestor.

  
Chairman