

ADVISORY OPINION #91-79

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON NOVEMBER 7, 1991

GOVERNMENTAL BODY SEEKING OPINION

A Part-time Prosecuting Attorney

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a part-time prosecuting attorney to act as counsel to the County Development Authority in his private practice?

FACTS RELIED UPON BY THE COMMISSION

The County Commission created an autonomous County Development Authority. The County Commission retains the power to appoint members to the Authority and may make monetary contributions to the Development Authority. However, the Development Authority is managed and controlled solely by the Authority's Board.

The requestor is a part-time prosecuting attorney and as such he is not statutorily required to represent the Development Authority in his capacity as a public official. The prosecuting attorney does not have authority or control over either the management of the Development Authority or the letting of public contracts by the Authority.

The County Development Authority would like to employ the requestor through his private practice to act as the Development Authority's legal counsel.

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(d)(1) states in pertinent part that...no elected...public official...or business with which he...is associated may be a party to or have an interest in the profits or benefits of a contract which such official...may have direct authority to enter into, or over which he...may have control...

West Virginia Code 6B-2-5(h)(1) states that no full-time public official...who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow himself...to be employed by any person who is or may be regulated by the governmental body which he...serves while he...serves in the governmental agency. The term "employment" within the meaning of this section includes professional services and other services rendered by the public official...whether rendered as an employee or as an independent contractor.

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Public Contract

Pursuant to subsection 6B-2-5(d)(1) of the Ethics Act, a public official may not have more than a limited interest in the profits or benefits of a public contract over which he has direct authority or control.

Although the County Commission retains the power to appoint members to the Authority and may make monetary contributions, the Development Authority is managed and controlled solely by the Authority's Board. As the County's part-time prosecuting attorney, the requestor does not have authority or control over the letting of public contracts by the Development Authority.

Therefore, it would not be a violation of subsection 6B-2-5(d)(1) of the Ethics Act for the part-time prosecuting attorney to act as counsel to the County Development Authority in his private practice.

Employment

Pursuant to subsection 6B-2-5(h)(1) of the Ethics Act a **full-time** public official who exercises policymaking, nonministerial or regulatory authority may not seek employment with **any person** who is or may be regulated by the governmental agency which he serves while he is employed by such agency.

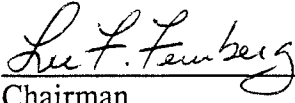
The requestor does have the requisite authority contemplated by this subsection since he performs nonministerial and regulatory functions as the prosecuting attorney. However, as noted above, this subsection applies only to full-time public officials.

Further, subsection 6B-1-3(f) of the Ethics Act defines "Person" as an individual, corporation, business entity, labor union, association, firm, partnership or other such organization. The Commission determined in Advisory Opinion #91-54 that since the definition does not include governmental agencies, the prohibition against seeking employment with regulated persons established in subsection 6B-2-5(h)(1) of the Ethics Act does not apply to seeking employment with other governmental agencies.

Therefore, it would not be a violation of subsection 6B-2-5(h)(1) of the Ethics Act for the part-time prosecuting attorney to act as counsel to the County Development Authority in his private practice.

Private Gain

The Commission would remind the requestor that subsection 6B-2-5(b)(1) of the Ethics Act prohibits a public official from using his public position or the resulting prestige for private gain. Simply, the requestor may not use his position as the County's prosecuting attorney to solicit business for his private practice.


Chairman