

ADVISORY OPINION NO. 91-82

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 5, 1991

GOVERNMENTAL BODY SEEKING OPINION

A State Trooper

OPINION SOUGHT

Whether it would be a violation of the Ethics Act for a State Trooper to be retained as a paid consultant to assure the accuracy of a movie production?

FACTS RELIED UPON BY THE COMMISSION

The Trooper participated in a search and rescue operation for a father and two sons who were lost in a cave without food or water for five days. The Trooper coordinated the search for these individuals and was involved in the rescue.

The Trooper has been contacted by an individual who would like to obtain the rights to the life stories of the persons involved in the incident. All of the parties involved, including the Trooper would be entitled compensation for these rights.

Further, this individual is currently negotiating to produce a made-for-television movie of the incident. The Trooper and various other individuals involved may be retained as paid consultants to ensure the accuracy of the film production. The Trooper would act as a production consultant during his off duty hours.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §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...

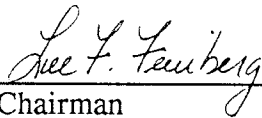
ADVISORY OPINION

As a result of his coordination and participation in the successful search and rescue operation, the requestor may be offered a temporary position as consultant to a film production company interested in filming a movie depicting the incident. It is understood that any consulting work would be performed during the requestor's off duty hours.

WV Code §6B-2-5(b)(1) prohibits public employees from using their public positions or prestige for their own private benefit. In some instances the Commission has ruled that this prohibition would bar the acceptance of private payment for providing information or services which are expected to be provided by persons in the course of fulfilling their official job responsibilities.

For example, in Advisory Opinion #91-02 the Commission found it inappropriate for a forensic laboratory employee to receive private pay as an expert witness for a court appearance to testify about a particular procedure he had conducted on the job, even though he would testify on his own time. In that case the employee's job responsibilities included such court appearances. It would have been a use of office for private gain if he had been permitted to receive private payment for performing the responsibilities of his job.

In this case it would not be a use of office for private gain for the requestor to be employed as a consultant, even though the opportunity arose by reason of, and will involve matters relating to, the performance of his official duties. Here the requestor is performing functions which are not a part of his official job responsibilities. Therefore, it would not be a violation of WV Code §6B-2-5(b)(1) for the Trooper to be retained as a paid consultant to assure the accuracy of a movie production.


Chairman