ADVISORY OPINION NO. 2013-59

Originally Issued on December 12, 2013 and

Ratified on January 21, 2014 by

THE WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **President of a State Licensing Board** asks if a member of that Board may accept a paid position with a private entity and remain on the Board.

FACTS RELIED UPON BY THE COMMISSION

The Requester is President of a State Licensing Board ("Board") established under W. Va. Code Section 30. The Board consists of nine members, appointed by the Governor with the advice and consent of the Senate. The Board regulates certain professionals, including the Board member who is the subject of this opinion.

The Board's enabling legislation provides that any person connected to a commercial entity that derives financial gain from the profession that the Board regulates is not eligible for appointment thereto.

The Board member has recently accepted a high-ranking position with a private firm that conducts business with professionals that the Board licenses and regulates.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code§ 6B-2-3(a) states in relevant part:

> A person subject to the provisions of this chapter may make application in writing to the ethics commission for an advisory opinion on whether an action or proposed action violates the provisions of this chapter ... and would thereby expose the person to sanctions by the commission or criminal prosecution.

ADVISORY OPINION

The Requester has asked whether a member of the Board is eligible to serve thereon. Although the Ethics Act governs potential ethical conflicts presented when a public servant concurrently holds a private position, it does not govern the makeup of

governing bodies. If the Board believes that one of its members has an improper conflict of interest rendering her ineligible to continue to serve on the Board, the Board should bring it to the attention of the Governor, who is the appointing authority. Additionally, the requester specifically asks the Ethics Commission to interpret the Board's enabling legislation. W. Va. Code§ 6B-2-3(a) explicitly limits the Ethics Commission's jurisdiction to the provisions of W. Va. Code§ 6B-1-1, *et. seq.* Since this advisory opinion request is outside the scope of the Ethics Commission's jurisdiction, the Commission is unable to answer the question presented.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.,* and does not purport to interpret other laws or rules. In accordance with W. Va. Code§ 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked, or the law is changed.

/s/ R. Kemp Morton, Chairman
Kemp Morton, Chairman