

ADVISORY OPINION NO. #91-69

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON OCTOBER 3, 1991

GOVERNMENTAL BODY SEEKING OPINION

A State Employee

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a full-time State employee to accept part-time employment as an Assistant County Prosecutor while maintaining his current employment?

FACTS RELIED UPON BY THE COMMISSION

The requestor is currently employed as the Legal Counsel for a unit of a State Department. His duties include investigating and referring for prosecution cases involving Medicaid Financial Fraud and Physical Abuse of Medicaid recipients by Medicaid providers. He does not represent the Department but specifically acts as the legal counsel.

The requestor has been offered a part-time position as an Assistant Prosecutor in a neighboring County to prosecute drug offenses, the salary for such position will be provided by a Federal Grant and the employment will be on a year-to-year contractual basis.

Both his current employer and the prospective employer have agreed to provide the necessary flexibility with regard to work hours to allow him to serve in both capacities.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(h)(1) states in pertinent part that... no full-time...public employee 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...is employed or serves in the governmental agency.

West Virginia Code §6B-1-3(f) states in pertinent part that..."Person" means an individual, corporation, business entity, labor union, association, firm, partnership, limited partnership, committee, club or other organization or group of persons, irrespective of the denomination given such organization or group.

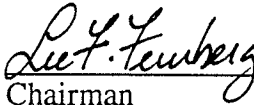
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Subsection 6B-2-5(h) of the Ethics Act prohibits a full-time public employee who exercises policymaking, nonministerial or regulatory authority from seeking employment with, or allowing himself to be employed by **any person** who is or may be regulated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

The requestor does have the requisite authority contemplated by this subsection since he performs policymaking, nonministerial and regulatory functions as it relates to cases involving Medicaid Financial Fraud and Physical Abuse of Medicaid recipients by Medicaid providers. Consequently, he may not seek employment with any person who is or may be regulated by his governmental agency.

However, 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 an employee of a State Department to accept part-time employment as an Assistant County Prosecutor while maintaining his current employment position.


Chairman