

ADVISORY OPINION NO. #91-74

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON OCTOBER 3, 1991

GOVERNMENTAL BODY SEEKING OPINION

A Public Employee

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a public employee to invest in a Company which has conducted business with his governmental agency?

FACTS RELIED UPON BY THE COMMISSION

The requestor's public employment position requires him to analyze the financial statements and business plans of companies that may locate or expand in the State and are applying for financial assistance. He presents an economic development loan proposal to the State Board which makes the loan decision based, in part, on the requestor's analysis of the company. His association with such companies ends when the loan application is approved by the State Board.

The requestor would like to invest in a Company which he first became familiar with when the Company requested an economic development loan from his State Department. The loan was approved and the Company will begin operation in the State. The Company is seeking equity investors with a minimum investment of \$5,000 each. Such an investment would not give the requestor a management voice in the Company.

The State Department does make available certain information regarding executed loans such as (1) the name of the debtor, (2) location(s) of the project, (3) the amount of the Department's loan, (4) the purpose of the loan, (5) the term, rate and interest of the loan and (6) the fixed assets which serve as security for the loan.

The requestor would like to invest in the Company because he believes that the Company's product will revolutionize the electronics industry and the sales potential is limitless. The requestor contends that such investment would be made as a private citizen and is based solely on information and knowledge of the Company which is available to the public.

The West Virginia Code provides that any documentary material or data made or received by this State Department for the purpose of furnishing assistance to a business, to the extent that such material or data consists of commercial or financial information regarding the financial position or business operation of such business shall not be considered a public record and shall be exempt from disclosure. The requestor states that the confidential financial information, such as sales projections, which he has obtained as a direct result of his public employment position, is made available by the Company to all potential investors.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 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...

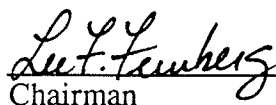
West Virginia Code Section 6B-2-5(e) states in pertinent part that...no present...public employee may knowingly and improperly disclose any confidential information acquired by him...in the course of his...official duties nor use such information to further his...personal interests...

ADVISORY OPINION

Pursuant to subsection 6B-2-5(b)(1) of the Ethics Act, a public employee may not use his office for his own private gain. The Commission considers the use of information acquired through a public employment position for personal benefit to fall within the purview of this subsection. Subsection 6B-2-5(e) of the Ethics Act prohibits a public employee from using confidential information acquired through the performance of official job responsibilities to further his private interests.

Therefore, it would be a violation of subsection 6B-2-5(e) of the Ethics Act for the public employee to invest in a Company which has conducted business with his governmental agency since, based upon the facts provided, the requestor appears to be relying in part upon information obtained as a direct result of his public employment position and which was not simultaneously available to general public.

It is unlikely that the requestor would have been aware of the investment opportunity provided by this Company **but for** his position as a public employee.


Chairman