

ADVISORY OPINION NO. #91-76

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON NOVEMBER 7, 1991

GOVERNMENTAL BODY SEEKING OPINION

A Public Employee

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a public employee to lease rental property to tenants who participate in programs which are administered and regulated by his governmental agency?

FACTS RELIED UPON BY THE COMMISSION

The requestor is employed by a State Department. His employment responsibilities include general supervision, administration and oversight of Departmental programs and the applicable policies and guidelines of such programs.

The requestor owns rental property which may be leased to individuals who participate in the programs administered and regulated by his governmental agency.

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 or that of another person...

West Virginia Code Section 6B-2-5(e) states 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 or the interests of another person.

West Virginia Code Section 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 or herself to be employed by any person who is or may be **regulated** by the governmental body which he or she serves while he or she is employed or serves in the governmental agency. The term "employment" within the meaning of this section includes professional services and other services rendered by the...public employee whether rendered as an employee or as an independent contractor.

ADVISORY OPINION

Pursuant to subsection 6B-2-5(h)(1) of the Ethics Act, a public employee who exercises policymaking, nonministerial or regulatory authority may not seek to be employed by any individual who may be regulated by his Department. The term regulate is not defined within the Ethics Act. However, in Advisory Opinion #91-60, the Commission determined that "regulate" is "to control or direct according to a rule", or "to adjust in conformity to a requirement or specification".

The requestor does have the requisite authority contemplated by this subsection since the public employee's job responsibilities would be classified as regulatory or nonministerial as it relates to the administration and oversight of the State Department's policies and programs.

The term "employment" contained in section 6B-2-5(h)(1) of the Ethics Act was construed by the Ethics Commission in Advisory Opinion #90-150 to include certain leases. The Commission considers the leasing of rental property to a regulated person to fit within the term "employment" as set forth in subsection 5B-2-5(h)(1).

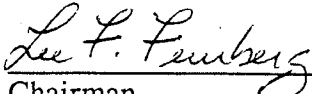
Therefore, it would be a violation of subsection 6B-2-5(h)(1) for the public employee to lease rental property to individuals who participate in the programs which are administered and regulated by the public employee's State Department when the public employee knows or has reason to know that the tenant is or may be regulated by his governmental agency as the recipient of the benefits of such programs.

However, the requestor may seek an exemption from the Commission from the prohibition against seeking employment with a person who is or may be regulated by his governmental agency on a case by case basis. If the requestor discovers that a tenant is a recipient of the benefits of a program administered by his State Department, he should immediately notify his supervisor and apply to the Ethics Commission for an exemption.

The Commission would remind the requestor that pursuant to subsection 6B-2-5(b)(1) of the Ethics Act, a public employee may not use his office or the resulting prestige for his own private gain or for the private gain of another. Simply, he may not use his position as the supervisor of Departmental programs to obtain the program benefits for persons leasing his rental property.

Further, subsection 6B-2-5(e) of the Ethics Act prohibits a public employee from disclosing any confidential information acquired through the performance of his job responsibilities to further his personal interests or the interests of another person.

Nothing in this opinion should be construed as preventing the State Department from imposing additional, more stringent requirements upon its employees facing this situation.


Chairman