

ADVISORY OPINION NO. 91-94

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 9, 1992

GOVERNMENTAL BODY SEEKING OPINION

An Attorney

OPINION SOUGHT

- a. Whether an attorney would be required to sever his employment, either temporarily or permanently, with an area Law Firm in order to serve as a staff attorney during the upcoming regular session of the Legislature?
- b. Whether it would be a violation of the Ethics Act for the Law Firm to continue to pay the attorney his regular salary while he is employed as a staff attorney during the upcoming regular session of the Legislature?
- c. Whether it would be a violation of the Ethics Act for the Law Firm with which the attorney is associated to represent clients in matters on which the attorney worked while he served as a staff attorney during the upcoming regular Legislative session?
- d. What are the other possible ethical considerations which might affect the propriety of this proposed arrangement?

FACTS RELIED UPON BY THE COMMISSION

An attorney who is associated with a Law Firm would like to serve as a staff attorney for the Senate Finance Committee during the upcoming Legislative session.

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 or that of another person.

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-2-5(e) states in pertinent part that...no present or former 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 §6B-2-5(f) states in pertinent part that...no present or former...public employee shall during or after his... public employment or service represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other specific matter which arose during his...period of public service or employment and in which he...personally participated in a decision-making, advisory or staff support capacity.

West Virginia Code §6B-2-5(k) states in pertinent part that...no public...employee shall knowingly request or accept from any governmental entity compensation or reimbursement for any expenses actually paid by...any other person.

ADVISORY OPINION

Employment

a. The Commission finds that the attorney would not be required to sever his employment with the area Law Firm, either temporarily or permanently, if he accepted employment as staff counsel during the legislative session since nothing contained within the Ethics Act would require such termination. The prohibition established in W.V. Code §6B-2-5(h) against employment by a person who is or may be regulated by one's governmental employer does not apply to part-time employees. The Commission finds that staff counsel hired by the Legislature on a per diem basis for only the length of the regular legislative session are part-time employees who are not covered under the aforementioned subsection of the Ethics Act.

Double Dipping

b. The question as to whether the attorney may receive his regular salary from the Law Firm while employed by the Legislature was answered in Advisory Opinion No. 91-06. The Commission held in that opinion that it would not be a violation of W.V. Code §6B-2-5(k) for a State Senator to receive his salary from his private employer, reduced by his legislative salary, for the period spent serving the legislative session. Similarly it would not be a violation of the Act for the attorney to receive his salary from his Law Firm reduced by the per diem salary he receives from the Legislature for serving as a staff attorney during the legislative session.

Prohibited Representation

c. The requestor also inquires as to whether the Law Firm, as a whole, would be conflicted out of representing client interests in matters on which the attorney worked; both during and after his period of employment with the Legislature. The Ethics Act's sanctions on outside employment activities apply only to current or former individual public officials and public employees. Nothing in the Ethics Act would regulate the conduct of other members of the Law Firm in the acceptance of clients. The requestor is advised, however, that he may wish to seek the views of the State Bar Ethics Counsel regarding potential conflict of interest problems for the firm as a whole.

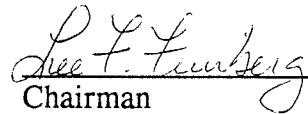
Pursuant to W.V. Code §6B-2-5(f) the individual attorney who will serve as a staff attorney for the Legislature is prohibited from ever representing a client on any specific matter which arose during his period of public service in which he personally participated in either a decision-making, advisory, or staff support capacity. It would therefore be a violation of the Ethics Act for that attorney to represent a client in a direct challenge to the constitutionality of a law which he helped draft. However, it would not be a violation of the Ethics Act for the attorney to represent a client in a matter which involved the general application of that law to the client. He could also perform work for the Law Firm unrelated to his work for the Legislature provided his work schedule for the Legislature permitted such activity and the activity did not involve the use of legislative support staff, long distance telephone calls or similar shifting of costs to the Legislature.

Private Gain

d. The Commission would generally caution the attorney to be mindful of the provisions of W.V. Code §6B-2-5(b) which prohibit a public employee from using his public employment position for his own private gain or the private gain of another. Simply, the attorney may not use his public employment position to obtain, influence, increase or promote business for the private Law Firm.

Confidential Information

d. Further, W.V. Code §6B-2-5(e) prohibits the disclosure of any confidential information acquired during the performance of his public employment responsibilities or the use of such information to further his personal interests or the interests of another person. Therefore, he should refrain from using any confidential information acquired while serving as counsel to a Legislative Committee to benefit a client of his Law Firm.


Chairman