

ADVISORY OPINION NO. 90-82

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MAY 3, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Public Employee

OPINION SOUGHT

Whether it is a violation of the Act for a public employee who has no ministerial, policy making or regulatory authority to work part-time for a private business which is not regulated by his State Department?

OTHER FACTS RELIED UPON BY THE COMMISSION

State Department Employment

The requestor is a paralegal assistant for a State Department. His duties include but are not limited to: determining compensability of claims (his authority extends to making rulings of compensability only, and does not include having the authority to reject claims), abstracting claims that have been submitted for a decision, processing authorizations for depositions, researching claims at the direction of staff attorneys, researching various legal issues and writing legal memoranda. Any other duties which compose his job description are procedural in nature and are done at the direction of the assigned staff attorneys. He has no policymaking, nonministerial or regulatory authority in his regular employment with the State Department.

Part-time Private Employment

The requestor has worked part-time for a private attorney. His duties include legal research, composing memoranda, drafting and filing pleadings, maintaining trial notebooks and other duties conducive to civil litigation and domestic relations. At no time has he been involved with the type of claims which are submitted during his work for the State Department.

The requestor would like to continue to work part-time for this attorney as well as try to locate other part-time work for private attorneys outside his public employment position.

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 or herself to be employed by any person who is or may be regulated by the governmental body which he serves while he is employed 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.

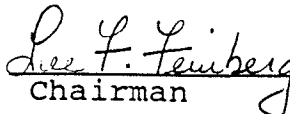
West Virginia Code 6B-2-5(e) states in pertinent part that...no present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests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

ADVISORY OPINION

The Commission finds that the public employee would not be in violation of subsection 6B-2-5(h)(1) since his duties as a public employee do not include any policymaking, nonministerial or regulatory authority.

Therefore, the Commission finds that it would not be a violation of subsection 6B-2-5(h)(1) of the Act for a public employee to work part-time for attorneys in the private sector, since his public employment does not entail any policymaking, nonministerial or regulatory authority.

The Commission would remind the requestor that subsection 6B-2-5(e) of the Act prohibits a public employee from disclosing any confidential information obtained or acquired during the course of performing his duties as a public employee.


Chairman