

ADVISORY OPINION NO. 90-148

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON SEPTEMBER 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Public Employee of a State Department

OPINION SOUGHT

- a. Whether previously rendered Advisory Opinion No.89-45 would be changed by the fact that the school bus inspectors after July 1, 1990 will be administering written examinations and any necessary behind-the-wheel skills tests related to the certification of school bus operators in the State?
- b. Whether it is the policy of the Ethics Commission to report individuals to the Internal Revenue Service, who have accepted sizeable gifts such as: airfare for extensive travel, or extensive vacations from vendors in violation of the Ethics Act?

OTHER FACTS RELIED UPON BY THE COMMISSION

School bus inspectors will be administering written examinations and any necessary behind-the-wheel skill tests related to the certification of school bus operators in the State after July 1, 1990, as well as determining which trainees and/or previously certified operators will be placed on each County's list of certified operators based on their performance on these tests. The behind-the-wheel test allows discretion and involves judgment calls on the part of the examiner as to a trainee's proficiency in driving the school bus.

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 or her office or the prestige of his or her office for his or her own private gain or that of another person. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, **without compensation**, does not constitute the use of prestige of office for private gain.

West Virginia Code 6B-2-5(h)(1) states 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 official or public employee whether rendered as an employee or as an independent contractor.

West Virginia Code Section 6B-2-5(h)(2) states in pertinent part that...no person regulated by a governmental agency shall offer employment to a full-time public employee of the regulating governmental agency during the period of time the public official or employee works...in such agency.

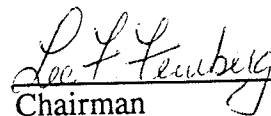
West Virginia Code section 6B-1-3(e) states that "ministerial functions", means actions or functions performed by an individual under a given state of facts in a prescribed manner in accordance with a mandate of legal authority, **without regard to, or without, the exercise of,** such individual's **own judgment** as to the propriety of the action being taken.

ADVISORY OPINION

a. The change in circumstances described herein by the requestor would not alter the answer given in Advisory Opinion No.89-45. The Commission found in that opinion it would not be a violation of the Ethics Act for these public employees to be employed by private trucking firms during off-duty hours to administer certain tests or provide instruction to third parties for remuneration, since the private trucking firms are not regulated by the public employees' governmental agency.

The finding as previously determined in Advisory Opinion No. 89-45 would not change simply because the school bus inspectors will now be administering written examinations and any necessary behind-the-wheel skills tests related to the certification of school bus operators in the State.

b. The Commission has not encountered a situation as described in question "b" of the request. However, the Commission would make a ruling on such circumstances on a case-by-case basis.


Chairman