

ADVISORY OPINION NO. 89-5

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON NOVEMBER 2, 1989

GOVERNMENTAL BODY SEEKING THE OPINION

a Delegate

OPINION SOUGHT

1. Whether the delegate's direct involvement on behalf of his banking investment firm with projects for state government and other public entities violates any provision of West Virginia Code Section 6B-2-5?
2. Whether the delegate's indirect involvement by way of his position as Senior Vice-President of the firm with projects for state government and other public entities violates any provision of West Virginia Code Section 6B-2-5?

OTHER PERTINENT FACTS RELIED UPON BY THE COMMISSION

The delegate is Senior Vice-President of an investment banking firm which transacts business in public and corporate finance, money management, resource recovery and energy development; which often involves the firm in capital formulation and financing strategies for public projects. The firm also acts as money manager for public treasuries and as developer and financier for energy and resource recovery projects. As Senior Vice-President of the firm the delegate is responsible although he may not be actively involved in a particular project.

STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(d)(1) states...no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract with the governmental body over which he or she has direct authority or with which he or she is employed: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: Provided, however, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body.

West Virginia Code Section 6B-2-5(e) states...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.

West Virginia Code Section 6B-2-5(b)(1) states...a public official or public employee may not 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 constituent services, without compensation, does not constitute the use of prestige of office for private gain.

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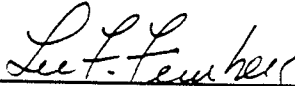
The Commission notes that at this time, neither the legislator nor the business with which he is associated has any contracts with any governmental body, and therefore, the questions posed by the legislator are in hypothetical form.

The second proviso in Subsection 5(d)(1) of the Act (lines 129-131) provides that the Act shall not be construed to prohibit a legislator from entering into a contract with any governmental body, but each case must turn on its own merits. If the legislator is permitted by statute to be a party to a contract with a governmental body then the business he is associated with is also permitted.

However, the delegate should be mindful that nothing in this opinion shall be construed to state that other provisions in the Act such as subsections 5(b), (e), or (g) are not applicable, should violations become evident to this commission.

Therefore, the delegate should not reveal any confidential information acquired by him as a result of his committee work or other legislative functions to further his or his business' interests.

Also, subsection (b)(1) requires the delegate not to intentionally use the prestige of his office for his or her business' private gain.



Chairman